

TROUBLING WOMEN: AMERICAN FICTIONS  
OF MARRIAGE AND PROPERTY, 1848-1867

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## ABSTRACT

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(Under the direction of Eliza Richards)

This study connects the domestic novel's period of extraordinary success, from approximately 1845 to 1865, to the legal developments of the early nineteenth century. During this period, both discourses responded to the volatile antebellum economy by endorsing women's removal from the marketplace. In order to limit speculation and create stability, legal rhetoric and literary narratives alike idealized marriage as a status, or hierarchical, relationship, even as other relationships were rewritten in contractual terms.

Within the context of the project, then, fiction takes on a double meaning. While legal discourse circulated "legal fictions"—rhetorical structures that shaped people's discussions of marriage—domestic novels envisioned the range of possibilities for women even within the confines of an inferior legal status.

"Troubling Women" traces the domestic novel's development in tandem with legislative debates and judicial decisions, elucidating why these discourses resisted domestic contracts and promoted status and protectionism. It begins with a historical overview, followed by an examination of James Fenimore Cooper's The Pioneers—a prototypical domestic plot in which an heiress's right marriage restores the "natural aristocracy." Focusing on narratives of the 1850s and 1860s by a range of authors—including Nathaniel

Hawthorne, Herman Melville, E.D.E.N. Southworth, Caroline Lee Hentz, Frank J. Webb, and Harriet Jacobs—the project illustrates how, in the intervening decades of increasing market dominance, Cooper’s proposed solution had become untenable. Like Cooper’s novel, these texts endorse women’s inferior legal status, but they also illustrate that women’s relationship to property had become an unsettled and contested question. The project concludes with an exploration of Elizabeth Stoddard’s novels from the 1860s, which highlight the profound costs of idealizing women’s legal inferiority, an increasingly indefensible construction in the wake of emancipation.

Grounded in historical detail, this project demonstrates how the domestic novel defused the culture’s fear of the market by reimagining women’s relationship to property. By detailing domestic novels’ complex engagements with legal discourse, “Troubling Women” rejects the persistent claims that these texts either unconsciously reflected or actively subverted conservative ideologies; instead it underscores the range of the genre’s political commitments.

To my parents, Thomas and Margaret Stockton

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## CHAPTER ONE

### MARRIAGE, STATUS, AND STABILITY IN ANTEBELLUM AMERICA

In 1855, prominent women's rights activist Lucy Stone married Henry Blackwell, and as a part of their marriage ceremony, the two published a protest against contemporary marriage law.<sup>1</sup> Stone had long been opposed to the institution of marriage and particularly the concept of coverture.<sup>2</sup> She believed that women should be able to own property, control their earnings, make wills, and sue in a court of law—all actions that, if she were ever to become a wife, she would no longer legally be able to do. Over a series of letters, Blackwell sought to convince Lucy that the laws of coverture did not need to affect them. As long as they could agree with one another about how their marriage should be structured, he argued, “such laws would not exist” (Wheeler 108). In other words, Blackwell proposed that the two establish their own rules for marriage. Their protest announced their unique arrangement, and it also condemned contemporary marriage law for its injustices:

We believe...that marriage should be an equal and permanent partnership, and so recognized by law; that until it is so recognized, married partners should provide against the radical injustice of present laws, by every means in their power.

We believe that, where domestic difficulties arise, no appeal should be made to legal tribunals under existing laws, but that all difficulties should be submitted to the equitable adjustment of arbitrators mutually chosen.

Thus, reverencing law, we enter our earnest protest against rules and customs which are unworthy of the name, since they violate justice, the essence of all law. (Blackwell 167-68)

In their protest, Stone and Blackwell asserted that because the law does not view marriage correctly—as a relationship between two equals—they would not use the court system and would instead rely on arbitrators, should any domestic disputes arise between them.

Yet, as legal scholars have pointed out, Stone and Blackwell's agreement was not legally binding, and it certainly did not grant Lucy equal standing with her husband. If Henry Blackwell ever decided to violate their marriage agreement and bring a domestic dispute to the courts, rather than to an arbitrator—if, for example, he sued for exclusive custody of their children—a judge would likely have rendered their marriage agreement null and void and then ruled in favor of Blackwell. This is because, according to nineteenth-century law, the husband and wife shared one legal identity, and so the wife could not enter into a contract with her own husband. In addition, although marriage was referred to as a contract, the two parties had no control over its terms, and they could not privately dissolve it. To put it another way: if marriage was a contract, it was a contract like no other. By getting married, then, Stone and Blackwell committed not only to each other; they also bound themselves to the dictates of the U.S. legal system, which they had condemned as unjust.

Stone and Blackwell never did bring a domestic dispute to the courts, but their agreement underscores the law's insistence on limiting women's legal powers, which seems particularly unusual in the context of an historical period that supposedly moved “from status to contract.” This resistance to women's contractual abilities and legal rights can be attributed to the enormous legal and economic changes in early nineteenth-century America. As legal practitioners attempted to distinguish U.S. law from its British legacy, legislators, judges, and jurists recognized the need to revise and better articulate the structure of marriage. In their attempts to standardize domestic law, they also sought to explain wives'

legal inferiority in a way that would be amenable to American democracy. They privileged a model of the family held together by affective bonds in which everyone has a distinct role, rather than a feudalistic model in which a male patriarch is “king” of the household. Nevertheless, women’s inferior legal position persisted, particularly in the form of the legal fiction of marital unity—the notion that the wife’s legal identity was subsumed under her husband’s. Legal fictions such as marital unity allowed lawmakers to envision ideals and possibilities. Regardless of the extent to which real wives actually asserted their independence or sold goods in the marketplace, the law imagined an ideal wife removed from market volatility and speculation. This removal provided a hope for stability amidst tremendous change. Thus, during the early decades of the nineteenth century, women’s inferior legal position became imbued with imaginative significance as a source of constancy and security. This project investigates the rhetorical function of the idealized portrayal of women in both legal and literary fictions, and it subsequently redefines the domestic novel as a genre engaged with—and even enabled by—the imaginative significance of women’s inferior legal position.

Before investigating the role of marriage in nineteenth-century literature, we must first examine the way the law defined marriage in the nineteenth century. Today, historians and literary scholars often focus on the unequal legal structure of marriage as a symbol of nineteenth-century America’s commitment to a patriarchal society. In particular, these scholars highlight the concept of marital unity—a theory found throughout common law that required the wife’s legal identity be merged into her husband’s—as an affront to our modern, more egalitarian sensibilities. In addition, wives could not enter into contracts, could not sue

or be sued, and could not hold property in their own names. In short, they had no legal identity under nineteenth-century American common law.<sup>3</sup> However, as recent legal scholarship has demonstrated, such a monolithic view underestimates the complexity of nineteenth-century American legal theory and practice.<sup>4</sup>

In spite of their disabilities under common law in the early nineteenth century, wives were able to hold property in a separate estate by using the equity courts. Through a complicated process of legal changes, which occurred in Britain and were then transferred to the American colonies, equity emerged as a separate jurisdiction from common law, and courts of equity also became responsible for distributing inheritances and administering wills. Equity allowed for antenuptial agreements and, most importantly, the creation of trusts for women. These trusts allowed wives to set aside property and legally disallow their husbands access to it. Though the wives did not technically own the wealth in the trust, an appointed trustee would administer it specifically for the woman's benefit, and she was entitled to all of the proceeds from it. If a husband encountered financial difficulties, he could sell his wife's personal property. He could not, however, gain access to the wealth in her trust, and neither could his creditors. Through equity, women, especially women with significant property, could gain "economic autonomy far beyond the limits of the common law" (Basch 21).

With the rise of the commercial economy in the early decades of the nineteenth century, equity became increasingly problematic for the U.S. legal system. First, because of the expense involved in using equity courts, equity was only available to the very wealthy. As the American middle class developed, more families wanted to protect women's property in a separate estate. In addition, equity procedures had been designed for the needs of an English economic system based in land, not the emerging American industrial economy.<sup>5</sup> As

a result, an increasing number of legislators demanded a revision of equity in an attempt to systematize and democratize American legal practices. The call for married women's property laws was tied directly to the codification movement. Between the years of 1815 and 1820, most states provided for the wife's ability to create a separate estate via a simple antenuptial agreement without the need for a trust.<sup>6</sup> By the mid-1840s most states were moving toward abolishing chancery courts and creating a single court system. It was at this point that state legislators generally passed married women's statutes.<sup>7</sup> Although these new laws varied in the capacities they afforded wives, they were all intended to codify equity (Rabkin 22).

As many legal historians have emphasized, this first wave of married women's property reform was not intended to revise the legal structure of marriage. "These acts, usually adopted with little lobbying from women," writes legal scholar Richard Chused, "created a special set of assets available for family use when husbands found themselves in trouble with creditors" (1361). Legislators were motivated to pass the laws primarily because of a series of economic panics in the first three decades of the nineteenth century: "Severe economic dips like the Panic of 1837 and the ensuing depression encouraged legislatures to pass statutes insulating the wife's property from the husband's creditors" (Basch, "Invisible Women," 135). These statutes protected this property by mandating that a husband could not sell his wife's separate estate without the wife's explicit, notarized agreement.<sup>8</sup> In other words, they attempted to secure one source of family property from the increasing commodification within the American economy. Often, legislators who supported such laws did so as a way to protect vulnerable daughters from potentially irresponsible sons-in-law.<sup>9</sup> The intent of these laws was to make it more difficult to involve a woman's

inherited property in speculative arrangements. As Alexander notes, “the result, while surely not making contracting separate property assets impossible, nevertheless did create something of a drag on the assets’ ready marketability” (175). Married women’s property reforms allowed men to enter into market relations more securely, knowing that one aspect of family wealth would remain stable and protected. As Chused concludes:

If the new model of family finance appearing in the first half of the nineteenth century called for men to undertake financial risks for the benefit of their families, then setting aside wives’ property simply provided another body of exempt assets when the risk taking went sour....Since women generally had less property than their husbands, it was logical that legislators would see wives’ property as a safe way of adding to the pool of assets insulated from attachment. (1402-03)

The first wave of married women’s property laws did not alter the status foundation of the marriage relationship. Rather, these laws were an attempt to accommodate the changing notions of American property.<sup>10</sup>

Although the new statutes made equity protections more available to women of broader economic background, the decline of equity meant that a husband and wife had less power to negotiate the terms of their marriage. Instead, the common law’s view of marriage became more pervasive and more difficult to amend on an individual basis. As Norma Basch argues, “While equity precedents recognized marriage as an individual bargain in which the contracting parties set their own financial terms, the common law depicted marriage as a monolithic institution in which the state imposed uniform rules for marital property” (“Invisible Women,” 135). These uniform rules for marital property were established by state legislators, various court cases, and nineteenth-century American legal treatises. As American jurisprudence distanced itself from British precedent, jurists recognized the need to articulate the practices and principles of American law, and over the course of nineteenth-

century American legal treatises we can trace an increased emphasis on marriage as a status relationship.

Although nineteenth-century jurists, judges, and legislators referred to the marriage as a contract, the legal construction of marriage was much more complicated than this term implies.<sup>11</sup> In the sense that marriage established a relationship between two parties, it resembled other contracts. However, legal theorists of the period believed that marriage was more of a relationship of status, rather than a true contractual relationship. Here, the word “status” does not suggest broader concepts such as “state,” “condition,” or “position”—as in the phrase “trying to attain a middle-class status.” In legal terms, status refers to a relationship in which each party possesses “relatively fixed rights and obligations” and performs “specific interrelated roles” that are codified by the state (Regan 6). The individual parties of a status relationship cannot set the terms of their rights and obligations within the relationship; instead, their roles are “subject to a set of publicly imposed expectations largely independent of the preferences of the person who holds that status” (Regan 9).

The status construction of marriage was inextricably tied to the concept of marital unity, a principle derived primarily from William Blackstone’s highly influential Commentaries on the Laws of England (1765). According to Blackstone, a husband and wife share one legal identity. As he states, once a woman becomes a wife, her legal identity is subsumed by that of her husband, “under whose wing, protection, and cover she performs everything: and is therefore called in our law...a feme covert” (Blackstone I:442).<sup>12</sup> Marital unity technically prevented a wife from holding property, suing in her own name, or entering into contracts because she did not have a legal identity of her own; theoretically, in the eyes of the law she did not exist.<sup>13</sup>

The first extended discussion of marriage in American legal letters was Tapping Reeve's The Law of Baron and Femme (1816). With his treatise, Reeve primarily sought to "Americanize the English common law," and he presented American law as he believed it should be (Grossberg 21). Reeve, who had been active in Revolutionary politics, was critical of wives' legal disadvantages, often drawing on the liberal rhetoric of late eighteenth-century America. Although Reeve claimed that marriage resembled most other civic contracts, "he managed to arrive at equally patriarchal results [as the common law]...by emphasizing the principle of male coercion" (Basch, Eyes of the Law, 58). Reeve rejected the common law's prohibition against wives making wills, but he accepted the view that a husband and wife could not enter into a contract with one another. According to Reeve, the husband always had the power to coerce his wife into an agreement, and the common law's structure simply reflected this natural fact. Because of male coercion, Reeve argued that equity—and the protections it afforded married women—was one of the core principles of English law that America should retain.

In contrast to Reeve, New York chancery chancellor James Kent's Commentaries on American Law (1826) and U.S. Supreme Court Justice Joseph Story's Conflict of Laws (1833) further supported the fiction of marital unity, and they explicitly emphasized marriage as a status relationship rather than a "mere" civil contract. Their texts, however, did not centrally focus on the issue of marriage laws, as did Massachusetts lawyer Joel Bishop's Commentaries on the Law of Marriage and Divorce (1852). Written almost four decades after Reeve's treatise, Bishop's text was not concerned with how American law ought to be. Rather, Bishop presented it as a logical system, which he merely needed to explain. Bishop disagreed with Reeve that marriage primarily resembled other private contracts. Instead, he



focused on the social component of the marriage arrangement. As legal historian Michael Grossberg claims, “Bishop charged that blurring the differences between marital and other pacts made for legal confusion and perpetuated a misreading of law’s basic principles....He lamented that true legal principle has been lost by sloppy use of the now ambiguous contract label” (Grossberg 22).

Bishop’s influential legal treatise provided the central paradigm for understanding marriage as a status relationship for mid-nineteenth century legal practitioners.<sup>14</sup> In Bishop’s view, two people’s initial decision to marry did constitute a contract. After the civil marriage ceremony, though, the husband and wife were “no longer governed by contract...but by the law” (Bishop 308). Bishop certainly was not the first to propose this progression of marriage from contract to status. The most notable forerunner for his view was an 1838 Kentucky case, Maguire v. Maguire, in which Judge George Robertson argued that marriage was not a contract in any conventional understanding of the term. It was “controlled by the sovereign power of the state” and could not “be dissolved by mutual consent only of the contract parties” (Maguire v. Maguire 181). According to this view, the marriage contract was a unique arrangement because of its structure.<sup>15</sup> First, once the marriage contract was executed, it lost many of the integral qualities of a contract. One of the parties (the woman) lost her civic identity and, hence, the ability to contract any further; the contract itself, therefore, foreclosed the possibility of further contract. This belief that marriage was essentially a wife’s final contract continued well past the Civil War until it came under more direct attack by women rights activists of the period.<sup>16</sup>

While Blackstone described marriage as analogous to a master-servant relationship, American jurists distanced themselves from such a formulation because of its feudalistic

implications.<sup>17</sup> Although the belief that marriage was a status relation persisted and even gained momentum in the mid-nineteenth century, the way wives' inferior status was justified did change. Legal treatises moved away from describing marriage as a relation of master and slave. As legal historian Reva Siegel demonstrates:

Far less frequently did courts assert that a husband had authority over his wife or property rights in her services. Instead, as courts struggled to explain why a married woman...lacked ordinary forms of legal recourse against her husband, judges invoked nineteenth-century conceptions of domesticity and companionate marriage to justify the relationship of husband and wife in new terms. ("Equal Protection," 1118)

Thus, wives' status became justified through the mutual affection between husband and wife. Wives purportedly did not need equal civil rights because they were protected by their husbands' affection and because equal rights might endanger the domestic sphere—a sphere increasingly conceptualized as antithetical to the competitive and purely contractual marketplace. In a New York case in 1858, Cropsey v. Sweeney, the judge claimed that a wife performed services “not as a servant, with a view of pay, but from higher and holier motives” (qtd. in Isenberg, 174).<sup>18</sup> Even after the next wave of property rights reform in the early 1860s, “a wife [still] could not enforce a contract with her husband compensating [her] for her work performed in the family sphere because such labor was to be performed altruistically, rather than self-interestedly: for love, not pay” (Siegel, “Equal Protection,” 1118). The law maintained that a woman's labor for her family came not from contractual motives, but from altruistic ones; her labor did not require any payment because it was its own reward.<sup>19</sup>

Wives' continued lack of self-possession flew in the face of traditional understandings of the relationship between labor, property, and self-ownership, drawn most commonly from John Locke.<sup>20</sup> In the Second Treatise Locke asserts that the natural

condition of men is “a State of perfect Freedom to...dispose of their Possessions...without asking leave, or depending upon the Will of any other Man” (287). Classical liberalism maintained that self-possession was essential for participating in government and attaining the full rights of a legal citizen. To participate actively and without bias in the body politic, a man could not be under another man’s sway or duress. In the early decades after the Revolution, self-possession was grounded in property ownership; property in land represented a wealth that one could always depend on and that could not be taken away.

As the law adapted to the changing market economy, jurists and legislators supported the commodification of land in order to facilitate commerce. Charles Sellers notes that a central moment in the market revolution occurred when legal practitioners revised inheritance laws in order “to make land a freely marketable commodity” (52). As property became more fluid and wage labor became more common, self-possession shifted from land ownership to being grounded in a core sense of the self. In other words, there was a kernel of the self that could not be alienated away in labor. Following this conception of self-possession, “all of the individual’s labor power is alienable in its transformation into a commodity, but the whole of the person is not.... The laborer, by this account, retains an essence of self into which market relations simply cannot penetrate” (Coviello 48).

Following Locke’s theory, ownership occurred as a result of labor; yet married women’s labor did not lead to ownership or, more importantly, self-possession. Instead, wives’ household labor was viewed as a natural outgrowth of their affection, and judges and jurists repeatedly denied that this labor led directly to complete self-determination or to wage compensation. In addition, the common law adoption of married women’s property laws created stability of real property for a family. As we have seen, men could engage in market

speculation with the assurance that an aspect of family wealth was protected from creditors and, therefore, the dangers of speculation.

The status construction of marriage, in tandem with property laws that protected wives' assets from commodification, sheltered wives from the volatility of the commercial economy. The wife—removed from the marketplace—took on the role that land once had: she represented a kind of property that could not enter the market and, therefore, could not fluctuate in value. In this way, the structure of marriage in antebellum America helped sustain male self-possession. As Hendrik Hartog notes, the fiction of marital unity “helped establish the terms of republican male citizenship” (Hartog 110). In other words, a wife came to signify that kernel of the self that a man retained despite his contractual obligations.

This project examines the interchange between the legal fiction of marital unity and the domestic fiction within the antebellum literary marketplace. Although legal practitioners recognized that marital unity could only truly exist in the language of the law, the fiction of marital unity “was so pervasive...that it affected as well as reflected attitudes toward women and marriage” (Basch, “Invisible Women,” 133). Indeed, the law gains power in culture as a discourse, and as such, it relies on narrative, fictions, and interpretations, just as literary discourse does. Yet while legal discourse codified protectionism and hierarchy in order to limit financial speculation, novels of the period imagined the multifaceted ways that married women could provide stability. Thus, the term “fiction” takes on a double meaning in this project: while legal fictions generated rhetorical structures that shaped people's discussions of marriage, literary fictions envisioned a range of possibilities for women even within the limitations of status.

It is not that the law and literature could hegemonically dictate and control people's private relationships. Rather, because of their narrative structures, the two discourses could create a sense of an ideal marriage that was possible, actuatable. By connecting legal fictions with literary fictions, we can understand how both forms of narrative create what Robert Cover has termed a nomos—"a normative universe"—of antebellum marriage (95). As Cover explains:

The codes that relate our normative system to our social constructions of reality and to our visions of what the world might be are narrative. The very imposition of a normative force upon a state of affairs, real or imagined, is the act of creating narrative. The various genres of narrative...are alike in their being the account of states of affairs affected by a normative force field. To live in a legal world requires that one know not only the precepts, but also their connections to possible and plausible states of affairs. It requires that one integrate not only the "is" and the "ought," but the "is," the "ought," and the "what might be." Narrative so integrates these domains. (102)

By articulating a certain model of marriage, legal and literary discourses created a standard by which antebellum couples could judge their own behaviors. They established, in other words, an ideal husband and an ideal wife with clear roles and responsibilities.

By examining both legal and literary discourses, this project connects the rise of the domestic novel with the status construction of marriage. It argues that the domestic novel centrally takes up the imaginative possibilities of the idealized—yet inferior—wife as a source of stability within America's emerging market culture. I use the term "domestic fiction," rather than the more popular "sentimentalism," because of the genre's attempt to find in the home—and women's position within it—a new site of family affiliation that is as stable and secure as land once was. As the definition of marriage becomes more contractual after the Civil War, the fantasy of status is foreclosed, and consequently, the domestic novel recedes as a genre.

In the next section of this chapter, I will examine James Fenimore Cooper's condemnation of women's property reforms in The Ways of the Hour (1851) and establish The Pioneers (1823) as a foundational domestic plot in which a woman's right marriage to the co-heir of the ancestral land restores the natural aristocracy. In the second chapter, I analyze Nathaniel Hawthorne's The House of the Seven Gables (1851) as an adaptation of Cooper's plot. In Hawthorne's novel, the increased power of the market prevents the possibility of a complete restoration of property, causing the noble family to retreat to a middle space between the market and the ancestral land. In contrast, Melville's Pierre (1852) uses similar plot dynamics to insist that no "right marriage" exists, that men persistently fail to protect women, and that, because the American aristocracy is based on a hollow notion of status, it cannot be restored.

While the first section of my project treats Cooper's nostalgic plot in the work of canonical male authors, the second section analyzes how other writers—with different relationships to the American polity than white, middle-class men—conceived of women's role as a basis for stability. The third chapter highlights how popular women writers also expressed fears of male speculation and, similar to Hawthorne and Melville, failed to envision women as contracting agents. Unlike their male counterparts, though, these authors, including E.D.E.N. Southworth, Caroline Lee Hentz, and Ann Stephens, examined how the law might provide a more reliable form of paternalism than husbands and fathers. In the fourth chapter, I explore African American writers' complex portrayal of marriage and property. While texts such as Frank Webb's The Garies and Their Friends (1857) and Harriet Jacobs's Incidents in the Life of a Slave Girl (1861) reveal white marriage to be a perversion

of the status ideal, they also project some hope that a status-based model of marriage could nonetheless secure the black domestic space against racial violence, thus creating an analogy between such violence and the fear of speculation. By examining these narratives alongside abolitionist rhetoric that portrayed the inviolate home space and the stable wife as the rewards of emancipation, I underscore the rhetorical difficulty of retaining status as a conceptual anchor while cultural reforms are effecting the transition from property to personhood. In the fifth and final chapter, I turn to the novels of Elizabeth Stoddard, written in the 1860s, which register disappointment that property reform failed to provide women with the self-possession promised by classical liberalism. The project ends with a consideration of what has appeared to be a literary-historical paradox: that the very moment in which women's rights advocates, spurred by legislation surrounding slave emancipation, focused explicitly on reforming the marriage contract also marked the beginning of the end of the literary form—the domestic novel—that had most forcefully presented the centrality of women's marital status to social and economic stability in antebellum U.S. culture.

#### Marriage and Stability in James Fenimore Cooper's Ideal America

In her study of married women's property reform in nineteenth-century New York, legal historian Norma Basch identifies James Fenimore Cooper as the foremost literary proponent of the fiction of marital unity. "Disillusioned with nineteenth-century egalitarianism," Basch claims, "Cooper selected the common law status of wives as the perfect paradigm for the naturally hierarchical structure of all human relationships" (Eyes of the Law 139). Pursuing Basch's insight helps uncover the centrality of marriage in Cooper's fiction. For Cooper, marriage alone could effectively combat the threats of market volatility

and speculation. Its status construction necessitated that all property be held by the husband and, thus, subsumed under one name. The husband, as the steward of his wife, would also become the steward of the land. Cooper privileged this model of ownership over land speculation, which he believed would only perpetuate competition and individuation indefinitely, rather than reconcile competing claims to the land. In Cooper's view, the competing claims to American land—from Native Americans, British loyalists, and American pioneers—impeded the kind of union and community necessary for the progress of the American nation. Through marriage, these competing claims could be reconciled. In this section, I demonstrate how women's inferior legal status enabled Cooper's ideal America of stable land ownership and male community.

As law and literature scholars have demonstrated, Cooper's fiction was shaped by the legal debates of early nineteenth-century New York. Two years before the publication of The Pioneers, New York politicians held a convention to revise the state constitution. The reformers, led by Martin Van Buren, advocated moving away from British legal practice in order to democratize the state's legal code and to address the needs of the emerging market economy. Defenders of the existing New York constitution, led by the jurist James Kent, argued that the principles behind British law encouraged communitarianism. In short, the supporters of the existing constitution, including Cooper, believed in a paternalistic form of government and were wary of rapid, egalitarian reform.<sup>21</sup>

In The Pioneers, Cooper transfers the debates of the constitutional convention into a frontier town in order to highlight what he believed was the most pressing threat to stability: land speculation. Although most of the novel's action takes place in 1793, the novel opens



with an overwhelmingly positive portrait of current-day Templeton, which he depicts as a rural paradise:

Roads diverge in every direction, from the even and graceful bottoms of the valleys, to the most rugged and intricate passes of the hills. Academies, and higher edifices of learning, meet the eye of the stranger, at every few miles, as he winds his way thorough this uneven territory; and places for the worship of God abound with that frequency which characterizes a moral and reflecting people. (Pioneers 15)

This “moral and reflecting people” is mirrored in the landscape, replete with churches and schools. After this initial description of Templeton, Cooper emphasizes how this civilization has been carved out of the wilderness:

The expedients of the pioneers who first broke ground in the settlement of this country, are succeeded by the permanent improvements of the yeoman, who intends to leave his remains to moulder under the sod which he tills, or, perhaps, of the son, who, born in the land, piously wishes to linger around the grave of his father.—Only forty years have passed since this territory was a wilderness. (Pioneers 16)

As Cooper indicates, this development can occur positively and quickly (“only forty years”) because of the family ties that imbue the land with deeper significance than mere monetary investment. Through his portrayal of the yeoman son who wants only to remain on the same land on which his father is buried, Cooper provides a fictional representation of the theories of ownership and natural use that Locke proposes in the Second Treatise. These rustic men work the land. Through their labor, they come to own it—and, critically for Cooper, to love it.

In this idyllic opening, Cooper foregrounds his purpose: to explain how a frontier settlement evolved into an established, sustainable town. As the beginning chapter shows, while the Templeton of the 1820s is calm, refined, and bucolic, Templeton in 1793 was, by contrast, plagued by heated debates, bursts of violence, egregious squandering of natural resources, and misapplications of the law. Cooper attributes such difficulties to the presence

of land speculators, such as Hiram Doolittle, who view land as merely an investment to be sold at a later date. For Cooper, speculators threaten community because they have no attachment to the land, and by commodifying land, they introduce market fluctuation into the rural economy. As Brook Thomas notes, Cooper believes that “increased value, determined by something outside of the land itself [and] brought about by speculation is unnatural, fictional, and suspect” (Thomas 35). Speculators exploit and then abandon the land in the pursuit of profit. Their activities cannot create the settled community of schools and churches that Cooper envisions at the beginning of the novel.

Literary critics who have investigated connections between The Pioneers and New York legal culture have focused on Cooper’s vision of male community and neglected the marriage that underpins it. They have rightly pointed out the way that the novel explores the construction of the social contract in America; in other words, Cooper interrogates what can hold men together in a nation that values independence. As Charles Hansford Adams has argued:

The notion of community is of course crucial for understanding Cooper’s vision....Whether nostalgically portraying Natty and Chingachgook in the woods, or criticizing the ‘wasty ways’ of the settlements, Cooper is always at heart concerned with...an ideal of ‘brotherhood.’ (‘Sisterhood’ is not, of course, a concept that much interests Cooper—nor are ‘sisters’ ever invited into any of Cooper’s imagined ‘brotherhoods,’ in the woods or the town.) (59)

Adams rightly points to the importance of male community in The Pioneers and throughout the Leatherstocking Tales. Yet he and other scholars overlook women’s essential role in Cooper’s ideal vision. Cooper’s men are able to form meaningful connections that support a stable society—rather than one ruled by threats of violence alone—because of the marriage contract. Norma Basch succinctly articulates the connection between the social contract and the status-based marriage contract: “the story of the social contract, which is a story of

freedom, represses the story of the marriage contract, which is a story of subjection” (Basch, “Declarations of Independence,” 35). According to Basch, the recent trend in feminist scholarship has been “devoted to exposing the concealed subordination of women to the political fraternity of men” (“Declarations of Independence,” 35).<sup>22</sup> Indeed, Cooper’s vision of political fraternity is predicated on the subjection of women in the status-based construction of marriage. Through surrendering their claims to property and creating affective connections between the home and the land, Cooper’s ideal wife can encourage her husband to become rooted in a certain area, which in turn causes him to develop the kind of ordered community that Cooper envisions at the beginning of The Pioneers. The status construction of marriage, for Cooper, is the fundamental structuring element for society; it represents a unity in which everyone has a place and everyone is cared for.

Cooper recognizes that women are essential for the stabilization of property. The story of The Pioneers is the story of how the home space becomes a source of family identity—as important, if not more so, than the land. To create his utopian agrarian community, Cooper “need[s] to imagine that the rightful owner of the land [i]s someone who resisted the tendency to turn it into a commodity” (Thomas 34). Therefore, he idealizes that part of the homefront for which no price can provide sufficient compensation; Cooper makes the home space impossible to commodify.

The trajectory of Cooper’s plot from wilderness to domestic space becomes evident in the initial chapters. As Judge Temple and his daughter, Elizabeth, enter Templeton, the judge pursues and attempts to kill a deer. After the deer falls from the shots of a gun other than Judge Temple’s, the other major male characters emerge—Natty Bumppo and a young stranger, Oliver—and insist that they killed the deer and have a right to it. The three men

engage in a debate about natural use and land ownership. Natty Bumppo appeals to natural laws, and Judge Temple privileges civil order. Although most scholars believe this debate establishes the novel's primary social concerns, if we continue to follow the scene, we can recognize the important position that Cooper envisions for women. During the men's discussion, Oliver reveals that the Judge has accidentally shot him, and the Judge, feeling remorseful, asks Oliver to accompany him to his home so that the man's wounds may be dressed properly. Initially, Oliver rejects the plan, but then Elizabeth emerges from the sleigh and gracefully reiterates her father's request. At that moment, Oliver extricates himself from the judge's concerned grasp, but his eyes remain fixated on Elizabeth's face. After Elizabeth speaks, Bumppo, who had remained silent when the Judge spoke, concedes that it may be best for Oliver to return to the Temple home, and at this moment Oliver finally acquiesces. Cooper carefully constructs the scene to underscore that Elizabeth's influence, rather than the Judge's reasoned argument, convinces Oliver to leave the woods and enter the home space. Elizabeth not only brings Oliver into the domestic space with the approval of Bumppo, Oliver's surrogate father in the wilderness, but she is also capable of discerning her proper mate amidst her numerous suitors in the novel. This scene, therefore, serves as a miniature of the entire novel's trajectory. Over time, Oliver will leave the woods and come to accept his position as a rural gentleman and the rightful proprietor of the Temple estate.

Just as Oliver moves from the wilderness to the domestic space, so does the reader. From the scene at the sleigh, Cooper transitions to a lengthy description of the Temple house. The building displays Judge Temple's wealth and authority, but the narrator implies that it was built on shaky principles. As is obvious upon Elizabeth's approach, this house—constructed completely by men in the ludicrous “composite order”—is not a home.<sup>23</sup> It is

incongruous, contains deformities, and has “only the air” of being comfortable (Pioneers 45). Through Elizabeth’s presence and her adept household management, the house will become a primary site for the novel’s activities. Importantly, it represents more than an alternative sphere of action away from the wilderness; it is the only sustainable sphere of action presented in the novel. Part of Cooper’s vision of progress is the inevitable decline of the town’s ramshackle structures and the rude dwellings in the wilderness, including Natty Bumppo’s own humble home. These must be abandoned in favor of the more comfortable home spaces created through women’s influence, which allow long-term settlers to take root and establish families.<sup>24</sup>

Cooper connects the fictional world of The Pioneers with the legal debates of early nineteenth-century New York by highlighting the pivotal moment in which a society decides whether the law will become an instrument of speculation or an instrument for meaningful community. Cooper explores the possible uses of the law through the figure of Judge Temple. Early in the novel, Judge Temple agrees with the speculators to use the law against Natty Bumppo. In addition, Cooper casts doubts about the legitimacy of Temple’s claims to the Otsego lands.<sup>25</sup> As Adams points out, “Although according to the law his ownership is indisputable, we are aware from the second chapter that the circumstances of his purchase render his claims morally if not legally suspect” (64). For much of the novel, Cooper emphasizes the aspects of Judge Temple that resemble a land speculator: a man who buys land to which he has no attachment, makes “improvements,” and finally sells the land for a tremendous profit. Like other speculators, Judge Temple buys his land for a low price at an auction—arguably the ultimate site of land’s commodification. Additionally, he alters the landscape in the name of improvement, and Bumppo suggests such changes are merely

cosmetic changes and intended only to increase the land's monetary value. Finally, Temple repeatedly boasts of the enormous increase of the value of his land since he purchased it.

Toward the end of the novel, Judge Temple's commitment to status rather than speculation is firmly settled when he finally answers Oliver's charges about the Effingham claim to the land. As Adams has astutely observed, this scene takes on the aura of a trial in the woods, in which Judge Temple steps down from his social position in order to defend himself. As he tells Oliver, " 'Thou shalt be thyself the judge,' " implying not only that he will not rule this court but also that Oliver will inherit the judge's role in the community (Pioneers 439). He then responds to Oliver's accusations by demonstrating his commitment to the principles of status, rather than contract. In explaining his relationship with Oliver's father, Temple claims: " 'Thy father was my early friend. He intrusted his fortune to my care. When we separated, he had such confidence in me, that he wished no security, no evidence of the trust, even had there been time or convenience for exacting it' " (Pioneers 439). The elder Effingham saw no need for written evidence of their understanding, insisting that his confidence in Marmaduke Temple was sufficient to secure the arrangement. As proof of his fulfillment of this trust, Judge Temple produces his will—an instrument of equity rather than of commercial contract—which deeds half of the land to the Effingham family. Temple then reassures Oliver of his inheritance by hinting at Oliver's impending marriage to Elizabeth, which would entitle Oliver to the rest of the estate: " 'One half of my estates shall be thine as soon as they can be conveyed to thee; and if what my suspicions tell me, be true, I suppose the other must follow speedily' " (Pioneers 443-44). Again, Oliver's inheritance is secured through the mechanism of equity, rather than the mechanisms of contract. The judge's trial, then, is the fantasy of equity's ascendance and the annihilation of

contract. Throughout the scene, Judge Temple refers exclusively to the instruments of equity courts, invoking the language of trusts, wills, and marital property. This scene, therefore, clarifies Temple's position as a civil official who repudiates contract and embraces the laws of status.<sup>26</sup> Through the character of Judge Temple, Cooper shows that civil law can be used to support the ordered transmission of property, rather than land speculation.

Yet civil law and ordered property transmission alone cannot create Cooper's ideal community. For the land to be properly imbued with meaning and affect, women must be part of Cooper's political vision. And yet Elizabeth is not just an empty vessel for property consolidation. She has earned her claim to the natural aristocracy, which she proves when she capably questions her father's legal judgments. After her father sentences Bumpo to prison, she presents an alternative vision of the law by pointing out its failure to make distinctions about character and intention. As she calmly tells her father, " 'I see the difficulty of your situation, dear sir...but in appreciating the offence of poor Natty, I cannot separate the minister of the law from the man' " (Pioneers 382). Although Judge Temple listens carefully to her criticisms, he ultimately dismisses her as too emotional. Cooper, however, does not jettison her critique so easily. When Elizabeth subsequently visits Bumpo in jail, she intends to convince him that he should withstand his sentence. Soon after arriving, however, she hopes that his plan to escape will be successful, which would presumably be against her father's wishes. Although we might be able to interpret the fire that later traps Elizabeth on Mt. Vision as a form of punishment for her complicity with Bumpo's lawless plan, it is Bumpo who eventually rescues her from danger, arguably justifying her view that he should not have been imprisoned. Throughout the novel,

Elizabeth sides with Bumpo and Oliver against her father, even while comprehending the necessity of the civil order he represents.

At other points in the novel, Elizabeth defends her father's principles, but she clearly retains her doubts about the appropriateness of civilization's methods. These feelings become most evident in her conversation with Indian John about the white man's usurpation of Native American lands. In this scene, Indian John offers an alternative narrative for "civilization":

"Daughter, since John was young, he has seen the white man from Frontinac come down on his white brothers at Albany, and fight!...He has seen his English and his American Fathers burying their tomahawks in each other's brains, for this very land. Did they fear God, and live in peace! He has seen the land pass away from the Fire-eater, and his children, and the child of his child, and a new chief set over the country. Did they live in peace who did this! did they fear God!" (Pioneers 401)

John's refrain—"Did they live in peace who did this! did they fear God!"—challenges Elizabeth's faith in the values of white, Western European culture. She attempts to answer his criticisms by claiming that he has failed to understand the full context of white men's actions:

"But you hardly understand the circumstances," said Elizabeth, more embarrassed than she would own, even to herself. "If you knew our laws and customs better, you would judge differently of our acts. Do not believe evil of my father, old Mohegan, for he is just and good." (Pioneers 401-02)

Elizabeth immediately associates Indian John's comments with her father, the representative of the law that she claims can justify such horrendous acts of violence, and connects him to the violence surrounding property ownership that Indian John has depicted. Even as she defends her father, though, the narrator makes it clear that Elizabeth is also embarrassed by her race's actions. Most likely, Indian John's narrative would not be persuasive to Judge Temple; at the very least, it would not convince him that white men's claim to the lands were



illegal. Elizabeth, however, is moved by John's speech, and John recognizes her compassion by calling her daughter throughout the exchange. In this scene, then, Elizabeth has two fathers: the white father whom she imperfectly defends and the Indian father for whom she feels sympathy. Indeed, this kind of sympathy will not generate effective political action to re-enfranchise the Indian. As numerous critics have pointed out, Cooper feels the Indian's removal is an inevitable, albeit regrettable, byproduct of civilization. However, we can also read this scene as Elizabeth's "education" in the Indian perspective, which is an important element of Cooper's vision for America. As children of the noble Temple and Effingham families, Elizabeth and Oliver unite what Cooper believes are the two greatest political civilizations—American and Britain. As "children" of Indian John and Natty Bumppo, their marriage also unites the novel's greatest representatives of the frontier ethic.

Elizabeth and Oliver's marriage unifies, and also erases, alternative claims to the Otsego land. Their union subsumes all of the property disputes, ensuring that their attachment to the land will be multi-layered and deep. At the end of the novel, they are ensconced in their house on the land that incorporates all of their family's connections. This connection to the land allows them to effectively combat commerce, for, as Brook Thomas noted: "...the Federalist ideal of a republic that encouraged commerce posed a threat to Cooper's agrarian ideal. His imaginary solution to this threat was a narrative that made certain that the authority of the guardian class was rooted in the soil" (38). Elizabeth's and Oliver's entitlement to the guardian class is secured through their relationships to their biological fathers but also due to their fathers in the forest.

At the end of the novel, Elizabeth and Oliver live together in the Temple house, which, as Natty Bumppo remarks, is now "full of laughter" (Pioneers 454). The final scene

opens with Elizabeth, wisely attuned to her husband's moods, silently obeying his wish to walk with him outside. During their walk, Elizabeth jokes that she will dominate the relationship with her will, but both she and Oliver laugh good-naturedly at the prospect. Her free-thinking is not a threat to her husband's authority, with his unique combination of training in the ways of the wilderness and the British aristocracy. Yet it is Bumpo who ultimately gets the last word on their relationship. As he prepares to leave the Otsego forest, he solemnly advises Elizabeth: " 'Trust in God, Madam, and your honourable husband, and the thoughts for an old man like me can never be long or bitter' " (Pioneers 455). At the close of the novel, the representative man of nature, then, reinforces the status construction of marriage. It creates order, and ultimately it will safeguard the land so that it will not be completely ruined for the likes of Natty Bumpo. By using Bumpo to articulate this view, Cooper transforms British legal precedence into natural law. <sup>27</sup>

From 1823 to 1848, the year when Cooper began composing his last novel, The Ways of the Hour, New York state law continued to capitulate to the pressures of the market economy. Such adaptations and reforms represent the downfall of American society for Cooper—a downfall he traces through marriage. British legal practice, in Cooper's view, is properly founded on property, and he is tentative about any legal reform that favors volatile markets over stable forms of property. In The Pioneers, Cooper conceived of marriage as supporting property's stability, but the New York married women's property law in 1848 overturned this safeguard. His final novel, The Ways of the Hour, is an impassioned reaction—even a product of revulsion—to the 1848 New York Married Woman's Property Law, which he predicts will destroy marriage and hopelessly corrupt American society. In

Cooper's view, the law transforms marriage into a contractual relationship, rendering the institution of marriage powerless against market volatility and social unrest. The Ways of the Hour underscores the manner in which mid-nineteenth-century America had become "more complex and less susceptible to the...resolutions carefully constructed in [Cooper's] fictions" (Adams 147).

In The Ways of the Hour, all of Cooper's criticisms of mid-century New York's politics are directed at the character of Mary Monson, whom he portrays simultaneously as a victim of the corrupt court system and as an exploiter of the recent married women's property law. When the novel begins, Mary has been charged with murdering the Goodwins, a couple who run a boarding house in Biberry on Long Island. Mary was sleeping there the night the cottage burned down. Although she escaped, two skeletons, believed to be the Goodwins, were found in the cottage's remnants. Soon after the fire, a neighbor realizes that Mrs. Goodwin's stocking stuffed with gold is missing, and the town's suspicion centers on Mary, who seems to have an endless supply of money and whose purse contains an unusual coin that exactly matches one in Mrs. Goodwin's collection. She is then arrested, and the novel opens on the day that the intelligent and established New York attorney, Dunscomb, agrees to defend her. Dunscomb, arguably the hero of the novel, is wary of Mary, who admits to using an alias, though she refuses to reveal any details of her life. Despite Dunscomb's legal counsel and the lack of physical evidence, the jury of common (and easily manipulated) townspeople convicts Mary of murder. After her conviction, Mary produces the supposedly dead husband, who had been hiding away in a local tavern, and she then cross-examines a neighbor who confesses to stealing Mrs. Goodwin's gold and slipping the

unique coin into Mary's purse. The neighbor then reveals that a simple accident caused a fire in the Goodwin's cottage, killing Mrs. Goodwin and her servant girl.

Despite Mary's vindication in court, her story is a cautionary, rather than happy, tale. As Joyce Warren has pointed out, rather than celebrating Mary's abilities and interests in the law, Cooper "condemns her behavior as 'unfeminine' and labels her a 'discredit to her sex' ...[seemingly undisturbed] that if Mary had behaved as a 'true woman,' she would have been executed" (232). Although Mary is acquitted for murder, Dunscomb's persistent distrust for her is validated when she finally reveals her other serious "crime." As she explains after the trial, the new married woman's property laws have enabled her to control her estate and abandon her obnoxious husband. Over the course of the novel, however, Cooper teaches Mary an important lesson. Cooper presents her as increasingly insane, implying that her distance from her husband's identity has dislocated her own sense of selfhood. Unable to care for herself, Mary retreats to Dunscomb's country estate at the end of the novel, where she slowly regains much of her sanity by learning her proper place relative to her male protectors.

Although the novel somewhat follows the plot of a conventional murder mystery, this narrative primarily serves as a frame that enables the characters to disparage New York and its hopeless politics. As Barbara Bardes and Suzanne Gossett claim in their compelling analysis of the novel, "Throughout The Ways of the Hour Cooper looks with horror toward the future of the United States. Fundamental property rights are threatened, new codes and constitutions endanger the law, and the educated gentry is being replaced by a mob that...does not constitute a meritocracy" (WOTH 88). Cooper uses dialogue to heap vitriol onto the press for its rumor-mongering and also to condemn the trial-by-jury system, which

is associated with bribery, petty manipulation, and incompetence. Yet the most consistent source of Cooper's scorn is New York's 1848 married woman's property law, which the male characters dismissively refer to as "the cup and saucer law" and the "Woman-hold-the-Purse Law." Dunscomb, a bachelor lawyer with strongly paternalistic beliefs, provides the most sustained attacks on the law, as in his biting sarcasmic remarks to Dr. McBrain, who is preparing for his third marriage:

"...There are runaway wives enough, at this moment, roaming up and down the land, setting the laws of God and man at defiance, and jingling their purses, when they happen to have money, under their lawful husbands' noses...But this damnable Code will uphold them, in some shape or other....One can't endure her husband because he smokes; another finds fault with his not going to church but once a day; another quarrels with him for going three times....All these ladies, forgetful as they are of their highest earthly duties, forgetful as they are of woman's very nature, are the models of divine virtues, and lay claim to the sympathies of mankind." (WOTH 275)

As Dunscomb makes clear, the new civil law overturns the natural law that dictates that women should be the subordinates of their husbands. It also purportedly enables women to enact revenge on their husbands for petty domestic disputes by taking control of the family property.

Disregarding the fact that men proposed and supported the legislation, Dunscomb implies that women demanded such reforms, and he even asserts that the new law eradicates all of the wife's responsibilities while alleviating none of the husband's: " 'There is no mode by which an errant wife can be made to perform her duties in boldly experimenting New York, though she can claim support and protection from her husband' " (WOTH 479).<sup>28</sup> Cooper even insinuates that the law fundamentally destroyed the status component of marriage. As Dr. McBrain remarks: " 'This calling marriage a 'contract,' too is what I never liked. It is something far more than a 'contract,' in my view of the matter' " (WOTH 17-18).

Here, Cooper connects married women's property law with a contractual model of marriage, though supporters of the reform were committed to marriage-as-status. Cooper's narrator and characters continually reiterate that married women's property laws have corrupted marriage, which, given the centrality of the status construction of marriage to Cooper's ideal society, necessarily entails the destabilization of the entire society.

Mary is virtually the only character in the book who ever articulates the "reform" perspective, but Cooper dismisses her arguments through increased implications that she is untrustworthy. In explaining her views, Mary asserts that "men have not dealt fairly by women. Possessing the power, they have made all the laws, fashioned all the opinions of the world, in their own favour" (WOTH 308). Yet Cooper disarms her critique by presenting her as unable to care for herself capably. Separated from her husband's civic identity, she lacks protection and fixity. For example, when she is arrested and placed in jail, she expresses pleasure at being in her cell. From her jail cell, Mary Monson confides to one of Dunscomb's apprentices:

"[F]or the first time in months I do feel myself safe—secure....jails are intended for places of security, are they not?...This may appear wonderful to you, but I do tell no more than sober truth, in repeating that, for the first time in months, I have now a sense of security. I am what you call in the hands of the law, and one there must be safe from everything but what the law can do to her." (WOTH 99-100)

Mary's paradoxical comment is a direct result of her decision to separate from her husband. Cooper makes clear that, having foolishly foresworn her husband's protection, Mary cannot create a safe space for herself. She requires protection that she can only really experience in imprisonment under the watchful eye of the law. As the novel continues, her prolonged separation from the structure of marriage makes Mary more disturbed and unstable. In the court scene, when she capably defends herself by producing and cross-examining witnesses,

her performance seems monstrous. Cooper presents Mary as a woman so focused on mastering the law and controlling her finances that she is unsexed and almost inhuman. Yet Mary is not truly psychotic or deranged. Rather, Cooper implies as much in order to demonstrate the dangerous consequences of the new property law. As Charles Hansford Adams comments, “For Cooper, a woman who would flee the marriage bond is necessarily unbalanced, since she is violating the proper order of nature by asserting her own desires against her husband’s authority... Her madness is in fact a product of the new laws: with such measures as the ‘cup and saucer’ law, the legislature is actively encouraging the sort of breakdown Mary experiences” (Adams 143). Mary’s willingness to act on the privileges gained through the married woman’s property law renders her unreliable as a character, negating any of her arguments about the injustices of the male legal system. In essence, Cooper creates Mary so that he can silence her.

Cooper’s final novel ends with a longing to return to the rural paradise that never existed, but that he imagined in The Pioneers. After Mary’s trial, which was corrupted by the town’s ineptness and petty prejudices, Dunscomb abandons New York City and retreats to his country estate, Rattletrap. Before retiring from legal practice, he arranges a legal separation for Mary, which affords her husband a considerable amount of her inherited fortune. She ends the novel residing with Dunscomb at Rattletrap, where one of Dunscomb’s pious female relatives converts her to Christianity and where she ultimately becomes reconciled to women’s place in the natural order. The narrator reports that her health is improving and that her lucid moments are increasing. Yet she remains fixated on a single ruling passion: divorce. In Cooper’s view, once Mary sunders the primary bonds of the marriage relationship, she cannot ever fully recover her sanity, and her obsession with the

legal realm continues to poison her mindset. As Mary's condition seems to underscore, the contemporary legal order has no coherence. Thus, The Ways of the Hour ends with a nostalgic view of the lost ideal of 1823 when status reigned and contractual relations were contained.

I situate Cooper as the original “domestic” novelist because of the way he binds the American landscape to the American homespace; their functions and their fates are the same for him. Cooper envisions a virtuous woman bestowing all of her property—and all of her rights to it—to the control of a righteous husband. This move protects against the speculation of land, and it reunites the land to the rightful owners, the “natural” aristocracy. His vision of protection from speculation roughly corresponds with the legal debates from 1820 through 1840. By the 1840s, however, the commercial markets and speculation had simply become too essential to the American economy to be overcome. In order to adapt to these changes, legislators across the United States passed a series of law that enabled families to interact with the credit economy more easily, in part because married women's property could be safely secured from market relations. Cooper, whose vision for American community depends on wives automatically ceding their property to their husbands, can only view this legislation as the final blow to his agrarian ideal.

The other authors in this project also look to women's relationship with property as a way to secure American society against the threat of market speculation. Unlike Cooper, they do not have the luxury to envision an American culture outside of market speculation and volatility; instead, their texts must wrestle more directly with these threatening forces. Yet all of these texts, including Cooper's, implicitly recognize the potential dangers of domesticity: if women make the wrong marriage choice, a series of tragic consequences can



follow for their family and their society, as the cautionary tale of Mary Monson unceasingly demonstrates.

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<sup>1</sup> The Reverend Thomas Wentworth Higginson read the protest at their ceremony, and it was also printed and distributed.

<sup>2</sup> See Lucy Stone and Antoinette Brown Blackwell, Friends and Sisters: Letters between Lucy Stone and Antoinette Brown Blackwell, 1846-1893, ed. Carol Lasser and Marlene Deahl Merrill. Urbana-Champaign: University of Illinois Press, 1987. 55-58.

<sup>3</sup> Because the particularities of marriage law varied from state to state, it can be difficult to characterize the exact situations of husbands and wives throughout the country. However, we can establish a general sense of how a wife's legal identity would have affected her sense of self-possession: "What rights a wife had...existed as rights possessed by her husband: as rights he lost, he gave, or he abused. Her place in the world, both metaphorically and spatially, was his place in the world; his home was her home wherever she actually lived. Citizenship would, from this perspective, have been something close to a contradiction in terms for a married woman." Hartog, Man and Wife, 100. It is important to note that the legal description, or theory, did not always match people's experiences. Although a wife's legal "place" was with her husband, she might—and often did—live elsewhere. This point demonstrates why legal historians refer to marital unity as a "legal fiction."

<sup>4</sup> The most recent example of this argument might be found in Hendrik Hartog's Man and Wife in America, which examines the very frequent exceptions to marital unity in the nineteenth century. However, this view can arguably be traced at least as far back as Michael Grossberg's comprehensive Governing the Hearth, which traces the evolution of American domestic law throughout the nineteenth century.

<sup>5</sup> For more on the impracticality of equity within the U.S. commercial economy, see Basch, In the Eyes of the Law, 38-40 and 113-135; see also Warbasse, 57-87.

<sup>6</sup> These changes illustrate how much legal reform was in the interest of clarifying creditor-debtor relations instead of improving women's rights. In 1836, New York abolished the use of trusts because of how trusts created two-tiered ownership: the trustee and the beneficiary. Instead of giving women the right to own property and thereby consolidating the ownerships, legislators simply abolished formal trusts altogether, severely limiting fathers' abilities to keep property in their daughters' hands. For more on New York legal reform in the 1830s and the role of fathers in women's legal reform, see Rabkin, Fathers to Daughters, 74-99.

<sup>7</sup> "Mississippi passed a married women's statute in 1839, Maine in 1844, and Massachusetts in 1845. A married women's clause appeared in the Texas Constitution in 1845, and a similar clause was in the proposed Wisconsin Constitution of 1847..." (Basch, Eyes of the Law 28). In addition, married women's clauses were included in the state constitutions of California, Oregon, and Kansas. For more, see Warbasse, Changing Legal Rights of Married Women.

<sup>8</sup> Before the agreement can be notarized, the wife must undergo a separate examination, away from her husband, with a government official. I will discuss these interviews, referred to as privy examinations, in more detail in Chapter Three.

<sup>9</sup> For example, Thomas Herttell introduced the first married women's property legislation in New York in 1837. In doing so, he did condemn contemporary marriage laws, arguing that they were based on English models of tyranny and were consequently out of step with American Republicanism. However, he also appealed to fathers who wanted to secure family wealth for their daughters. In the New York State Assembly in 1836, Herttell vilified husbands and claimed that new women's property laws could "protect the rights and property of married women from injury and waste by means of the improvident, prodigal, intemperate and dissolute habits and practices of their husbands." As quoted in Rabkin, Fathers to Daughters 86. Rabkin goes on to claim that: "Such an approach was surely calculated to appeal to any father in the legislature" (86).

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<sup>10</sup> In recognizing the male legislators' goals in passing married women's property statutes, I do not intend to underestimate the extent to which many women activists supported their passage. Most notably, attendees at the Seneca Falls convention in New York in 1848 heralded the passage of recent New York married women's property laws. However, as many historians have pointed out, most statutes were passed with little involvement from women. See Chused and Warbasse.

<sup>11</sup> As a lawyer in the late nineteenth century claimed, "the domestic relations law of...New York says that marriage shall continue to be a civil contract, the phrase is practically meaningless....[M]arriage is the foundation of the family and the origin of domestic relations, which are considered of greatest importance to civilization and social progress, it is deemed to be a social institution, a status, and not a civil contract" (qtd in Grossberg 23).

<sup>12</sup> Blackstone explicitly referred to this as the system of coverture. However, in this study, I will not employ coverture as a stand-in for the status construction of marriage. Though coverture might seem like a formal legal system, in the United States, where marriage is legislated by the individual states, it is difficult to locate such a system. As this project demonstrates through the evolution of married women's property laws, determining the end of coverture in the U.S. is an almost impossible endeavor. For example, by the late 1830s, wives could own property in their own names in Mississippi, but the status construction of marriage remained firmly intact within Mississippi courts. Regardless of her ability to own property, a wife could not be sued or enter into contracts. Instead of using the term coverture, I will refer to the status construction of marriage as a way to understand a wife's position in the eyes of the law.

<sup>13</sup> I use the word "theoretically" here because marital unity was a legal fiction. In other words, it was a legal convention that made adjudicating cases easier, but legal practitioners understood that it did not indicate reality. Therefore, as several legal historians have recently emphasized, there were many ways in everyday life that husbands and wives sidestepped marital unity. In particular, see Hartog, Man and Wife in America. As I will demonstrate later in this introduction, though, my interest as a literary scholar is precisely located in the rhetorical power of this "fiction."

<sup>14</sup> For more on Bishop's influence, see VanBurkleo 69-79.

<sup>15</sup> In part, I am arguing against Cindy Weinstein's compelling examination of the redefinition of the family in antebellum sentimental literature. While Weinstein charts a rising trend toward contract as the basis for family relation, I assert that legal theorists and judges resisted the notion that marriage was purely contractual until well after the Civil War. For example, in 1873, Oliver Wendell Holmes, Jr., revised a new edition of James Kent's Commentaries to define matrimony as a status. See Grossberg 23. James Schouler, in his influential domestic law treatise, published in 1874, emphatically claimed that marriage was "not on the footing of ordinary contracts...." As quoted in Hartog 76. Grossberg quotes a New York attorney in 1889 who stated that since " 'marriage is the foundation of the family and the origin of domestic relations, which are considered of greatest importance to civilization and social progress, it is deemed to be a social institution, a status, and not a civil contract' " As quoted in Grossberg 23. More information about the prevalence of the status view of marriage can be found in Grossberg 17-29; Basch, Eyes of the Law 229-231; Hartog 78-103. Although Stoddard's novels do follow many of the same patterns Weinstein notes, her novels also register a distinct complaint about women's status. See Weinstein 1-12.

<sup>16</sup> The U.S. Supreme Court continued to cite Bishop as well as the Maguire v. Maguire case as late as 1881 in the case of Maynard v. Hill, a decades-long inheritance case involving child support, land speculation in Western territories, and multiple marriages. The Maynard case demonstrates the complex nexus of social and cultural changes that affected marriage law.

<sup>17</sup> For more on this distancing, see Basch, In the Eyes of the Law 56-7.

<sup>18</sup> Similar arguments were employed in the Pennsylvania case Raybold v. Raybold in 1853 and in the Maine case Merrill v. Smith in 1854. For more on these cases, see Isenberg 263.

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<sup>19</sup> Sarah Josepha Hale provides an exemplary depiction of this exchange in her domestic manual, The Ladies' New Book of Cookery, published in 1852: "The table, if wisely ordered, with economy, skill and taste, is the central attraction of home; the Lady who presides there, with kindness, carefulness and dignity, receives homage from the Master of the House, when he places at her disposal the wealth for which he toils. The husband earns, the wife dispenses; are not her duties as important as his?" (iii). Although men were supposedly working equally for their families' subsistence, in fact, the legal structure of earnings and property rights meant that a man could more easily retain earnings and assets in the event of his wife's death or divorce.

<sup>20</sup> For more on Locke's philosophy and self-possession, see C.B. Macpherson's concept of possessive individualism, which provides an in-depth examination of Locke's connection between property and self-ownership. Gillian Brown investigates how the domestic space bolstered and supplemented subjective identity in light of impinging market forces in Domestic Individualism: Imagining Self in Nineteenth-Century America.

<sup>21</sup> As we have seen earlier in this chapter, Kent, like Cooper, strongly supported the status construction of marriage. He claimed in his Commentaries: "the husband is the best judge of the wants of the family, and the means of supplying them," adding that it is "within his rights to put gentle restraints on her liberty" (2:180, 181).

<sup>22</sup> Basch attributes this trend to Carole Pateman's influential The Sexual Contract.

<sup>23</sup> For a comparison between the composite order and nineteenth-century legal theories, see Thomas, pp. 37-8.

<sup>24</sup> Signe Wegener provides an in-depth discussion of the function of Elizabeth Temple's domesticity.

<sup>25</sup> One reason for the uncertainty surrounding Judge Temple may involve Brook Thomas's insight that Temple might be based on the figure of James Kent. As Thomas points out but does not develop, Cooper and Kent disagreed on the importance of the commercial economy. Most of Kent's rulings reflect his advocacy for the emerging economy, and Cooper was considerably more anxious about the market, as The Pioneers demonstrates. It is possible to read Judge Temple as Cooper's optimistic hope for Kent's eventual attitude toward status.

<sup>26</sup> We should not really be surprised at Temple's allegiance to status because of his early history. As a young man, Temple increased his station in society by marrying Elizabeth's mother. He has personally benefited from the dictates of coverture, which granted him control of all of his wife's real and personal property. Cooper also reveals that although Temple had been a successful businessman, he rejected the commercial economy in favor of the stability of land settlement. Thus, Temple's own narrative traces a rejection of contract in favor of the agrarian, almost feudalistic, society he helps construct in Templeton.

<sup>27</sup> Natty's final words in support of the status arrangement of marriage further support Brook Thomas's assertion that Natty Bumppo and Judge Temple both represent different aspects of Locke's political theories. See Thomas 40-4.

<sup>28</sup> Richard Chused makes the conservative project of the 1848 New York law clear in his examination of antebellum married women's property reforms: "Despite the well-known connection between legislative petitioning and lobbying by a few women in the late 1840's and the passage of a few of the married women's acts, most of the early acts, modest and conservative in tone, were compatible with prior and contemporary legislation of the most ordinary sort. Even the New York act of 1848, the best known of all the early statutes, was extremely narrow in scope" (1410).

## CHAPTER TWO

### “RESTORING TO YOU YOUR OWN PROPERTY”:

#### HAWTHORNE, MELVILLE, AND THE FLIGHT FROM CONTRACT

The ascendancy of the commodified conception of property to dominance in the legal thought in the first half of the nineteenth century was, to be sure, greeted with optimism and encouragement. Yet it was also greeted, even by those who benefited from it, with a sense of anxiety that the social revolution it wrought might spin out of control. Nostalgia is, after all, a symptom of fear, and the antebellum property law reformers may ultimately be described as prisoners of nostalgia.

—Gregory Alexander, Commodity and Propriety: Competing Visions of Property in American Legal Thought, 1776-1970, 184

In July of 1852, Herman Melville and his father-in-law, Justice Lemuel Shaw, vacationed together near New Bedford and Nantucket. They were accompanied much of the time by Shaw's friend, Massachusetts Attorney General John H. Clifford. During the trip, Clifford related a peculiar story to Melville and Shaw about a case he had worked on years before, involving a woman named Agatha Hatch from Pembroke, Massachusetts. While a teenager, she cared for a shipwrecked sailor, Robertson, whom she soon married. After recuperating, Robertson returned to sailing life, embarking mostly on short, local voyages. Two years later, Agatha became pregnant, and Robertson left on a sailing vessel, never to return. For the next seventeen years, Agatha worked to support herself and her daughter without hearing from Robertson. At that time, he made a brief and mysterious overnight visit in which he gave his wife and daughter a considerable sum of money. Approximately a year later, on the eve of his daughter's wedding, he visited again to give her a bridal gift and at also to try to convince his family to leave with him for Missouri. They declined his offer, but

he continued to send an annual remittance to his daughter and Agatha for the rest of his life. He even wrote to inform Agatha that he would be marrying again, which did not surprise her since she suspected (rightfully) that he had already committed bigamy with another woman during his initial seventeen-year absence.<sup>1</sup>

When Robertson died intestate some years later, the executor of his estate only discovered Agatha and her daughter's existence because the daughter happened to send her father a letter, which was consequently delivered to the executor. The executor was left then to determine the proper distribution of the funds, and it was at this point that Clifford, a young lawyer, was called in to help collect testimonies from the various parties. Clifford asked Agatha why she had never tried to inform Robertson's other wives about her existence. He noted her response:

She stated the causes with a simplicity & pathos which carried that conviction irresistibly to my mind. The only good it could have done to expose him would have been to drive Robertson away and forever disgrace him & it would certainly have made Mrs. Irvin & her children wretched for the rest of their days—"I had no wish" said the wife "to make either of them unhappy, notwithstanding all I had suffered on his account"—It was to me a most striking instance of long continued & uncomplaining submission to wrong and anguish on the part of a wife, which made her in my eyes a heroine. (Correspondence 624)

Clifford apparently believed that Melville was interested in writing Agatha's story because he assured Melville that he had taken extensive notes about the case in his journal. Melville encouraged Clifford to send him as much documentation as he had available, even though he claimed in his letters that he did not initially think of developing the material into a literary endeavor. But as negative reviews of Pierre emerged, Melville buried himself in Clifford's journal about the Hatch/Robertson case. On August 13, 1852, Melville wrote to Hawthorne about the story for the first time, explaining how one night on vacation he and a "gentleman from New Bedford, a lawyer" were discussing "the great patience, and endurance, and

resignedness of the women of the island in submitting so uncomplainingly to the long, long absences of their sailor husbands” (Correspondence 232). In that packet to Hawthorne, Melville included Clifford’s source materials, believing that Hawthorne would be the better writer for the tale because “this thing lies very much in a vein, with which you are peculiarly familiar” (Correspondence 234).

It is not surprising that Melville thought of Hawthorne when he learned the details of Agatha Hatch’s life story. Both authors had recently completed major novels that investigated women’s relationship to male property. Hawthorne’s The House of the Seven Gables (1851) was published first, which inspired—and was shortly followed by—Melville’s Pierre (1852). For both Hawthorne and Melville, Agatha’s story would likely have provided an interesting vantage point to consider women’s role in marriage, as well as their relationship to male property accumulation and wage labor.<sup>2</sup> Agatha’s story was also inextricably tied to legal discourse. The story was introduced to Melville on a trip with a prominent lawyer and a famous judge, and it involved the minute and complicated details of women’s inheritance in the early decades of nineteenth-century America. More particularly, Agatha’s story focused on the dynamics of inheritance, which reappear throughout Hawthorne’s and Melville’s body of work. The interest in Agatha’s story—from Clifford, Melville, and seemingly Hawthorne as well—demonstrates the pervasive concern about women’s relationship to property and the resulting implications for the marriage contract.<sup>3</sup>

Melville continues his letter to Hawthorne from August 13 by providing his opinions on how to construct the story. He defends the sailor Robertson, (whom he renames Robinson), and disagrees with Clifford’s judgment that Robertson should “meet with punishment” for having abandoned his first wife (Correspondence 624). Melville insists that

Robertson's desertion was not premeditated, maintaining that "the whole sin stole upon him insensibly—so that it would perhaps have been hard for him to settle upon the exact day when he could say to himself, 'Now I have deserted my wife...' " (Correspondence 234). In his speculations on the story, Melville writes to Hawthorne, "It were well, if from her knowledge of the deep miseries produced to wives by marrying seafaring men, Agatha should have formed a young determination never to marry a sailor; which resolve in her, however, is afterwards overborne by the omnipotence of Love" (Correspondence 236). He then envisions Agatha traveling every day for seventeen years to check her mail, hoping for some word from her estranged husband. Clearly, in Melville's view of the story, Robertson is a typical adventure-hungry sailor, and Agatha is his devoted and domestic wife. Melville ends his letter to Hawthorne with an acknowledgment that he might have offended Hawthorne by providing too much guidance on the story. He assures Hawthorne finally, "I do not...imagine that you will think that I am so silly as to flatter myself I am giving you anything of my own. I am but restoring to you your own property—which you would quickly enough have identified for yourself..." (Correspondence 237). For Melville, evidently, Hawthorne "owned" the rights to this tale about wives, husbands, abandonment, and wealth. His comment to Hawthorne underscores the increasingly uncertain and unstable quality of property in the nineteenth century—from credit to speculation to literary inspiration.

In December 1852, Hawthorne and Melville apparently met to discuss the story. Although extant correspondence provides scant details on their brief collaboration, Hawthorne eventually decided that Melville should write the tale, and some months later Melville developed a draft to a story he titled "Isle of the Cross."<sup>4</sup> Perhaps, if the story had



survived, modern readers could discern more clearly in Melville's writing an extended concern about women's status in marriage and women's relationship to property, as they do in Hawthorne's work. It is evident from the surviving material, however, that in 1852—in the midst of significant married women's property reform debates and newly enacted legislation—Hawthorne and Melville were engaged in investigating these same concerns in their literary productions.<sup>5</sup>

No two novels demonstrate these concerns better than The House of the Seven Gables and Pierre. Both texts reinterpret Cooper's nostalgic domestic plot of family property and marriage in order to substantively investigate the rapid changes of America's economic system in the mid-nineteenth century. While Hawthorne, like Cooper, finds hope in status relationships, he critiques the concept of a "natural" aristocracy. Writing almost two decades after Cooper, he views the market's ascendancy as inevitable, though not inescapable. Through the plot turns of The House of the Seven Gables, Hawthorne envisions a middle space between the market and the aristocratic system, which is secured by women's inferior status. In contrast, Melville's Pierre uses similar plot dynamics to insist that no "right marriage" exists, that men persistently fail to protect women, and that, because the American aristocracy is based on a hollow notion of status, it cannot be restored.

"Someone is always at the drowning point": Market Anxiety and the  
Marriage Contract in The House of the Seven Gables

Critics have long noted the similarities between the plots of The House of the Seven Gables and The Pioneers. In both novels, a young single woman comes to a family estate, creates domestic order, and eventually marries a co-claimant of the ancestral land, who

conceals his identity for much of the narrative.<sup>6</sup> The restoration of ancestral lands in both novels, therefore, depends on women's ability to recognize the "right husband" and their willingness to cede property (both their ownership of the land and their ownership of themselves) to their virtuous husbands. Women's marriage choices reconcile property disputes, and in establishing a more stable social order, they help resist the fluctuations inherent in the encroaching commercial economy. Like contemporary legal discourse, both novels configure women as a way to provide fixity and materiality despite the instability of new forms of wealth, including credit, speculation, and cash.<sup>7</sup> Both Cooper's and Hawthorne's novels envision women's willingness to cede property—and therefore their self-possession—as the last possibility for stability amidst economic volatility and immateriality.

In The House of the Seven Gables, ancestral land is not a viable solution for the problems posed by the powerful market economy. Even though Hawthorne, like Cooper, is concerned with the fluctuations and volatility of the new economy, Hawthorne does not seek to reinstate Locke's theories of natural use in order to establish a natural aristocracy. While both authors view marriage as an instrument that secures men's self-possession, The Pioneers endorses the establishment of a natural aristocracy in order to effectively combat the increasingly powerful market. In Cooper's text, women, like ancestral real estate, are a "space," associated strongly with family identity, that needs to be protected by upper-class white males. Cooper's women become an essential part of a family's property and therefore contribute to Locke's theories of self-possession in the same way that land does. In The House of the Seven Gables, Hawthorne borrows many of Cooper's plot elements, but he jettisons land as a requirement for men's self-possession. Instead, he envisions women and

the status-based marriage contract as the last viable source for men's fixity. Although Phoebe's marriage, like Elizabeth Temple's, does quell the family's property disputes, the Maule/Pyncheon family has no intention of inhabiting or, in Locke's sense, owning the ancestral land at the end of The House of the Seven Gables. In The Pioneers the Temple/Effingham land is poised to become even more valuable because of its owners' stewardship, while the Pyncheons' eastern land is abandoned and declared valueless at the close of Hawthorne's novel.

Throughout The House of the Seven Gables, Hawthorne maintains that the "natural aristocracy" is not natural at all; it acquires wealth through underhanded means—most typically by misusing the law. These powerful people then transmit their illegitimate wealth through inheritance. From the opening pages of the novel, Hawthorne condemns inherited wealth as a curse rather than a benefit to future generations. Claiming that the moral of his tale is that "the wrongdoing of one generation lives into the successive ones," he expresses the hope that his romance will "effectually convince mankind...of the folly of tumbling down an avalanche of ill-gotten gold, or real estate, on the heads of the unfortunate posterity..." (HOTSG viii). This focus on inherited real estate establishes the novel's central position on possession: it critiques Locke's theories of land ownership and endorses the status-based model of marriage. The House of the Seven Gables demonstrates that, although land ownership may seem based in natural law, the law is in fact a social construction, which men can manipulate in order to overturn others' legitimate claims. In other words, although land claims might seem irrefutable, particularly when compared to ownership claims on fungible currency, land ownership is actually as mystified and unjust as the market system. Therefore, Hawthorne rejects land ownership as a basis for self-possession and focuses

instead on the structure of the marriage contract as a source of stability. I will investigate Hawthorne's critiques and solutions by first elucidating his critique of "natural" law and the supposedly "natural" aristocracy it establishes. While the novel seems to endorse the upper class's demise, I will examine how Hawthorne's focus on women's relationship to property underscores the dangers of abandoning status relationships entirely in favor of the market economy.

### Maule vs. Pyncheon: the Ends of "Natural" Law

Through the story of the Pyncheons' manipulation of the law, Hawthorne expresses skepticism that Locke's theories ever operated according to their ideals. The first significant misuse of the law occurs when Colonel Pyncheon, the Puritan patriarch of the family, tries to convince the legislature to bequeath to him the real estate for the site of the House of Seven Gables. He attempts to wrest the land from Matthew Maule not through legitimate means but by making the law bend to his will. However, as the narrator explains, "Matthew Maule...was stubborn in the defense of what he considered his right; and...he succeeded in protecting the acre or two of earth which, with his own toil, he had hewn out of the primeval forest, to be his garden ground and homestead" (HOTSG 12-13). Maule's attempt to justify his ownership claims echo the theory of Locke's Second Treatise, which asserts that ownership occurs when a man mixes his own labor with natural resources.<sup>8</sup> Yet Maule's efforts to secure his real estate claims through natural use do not succeed because Colonel Pyncheon manipulates the law again—this time by accusing Maule of being a wizard during the Salem witchcraft crisis. As the narrator recognizes, Matthew Maule's cultivation should

have guaranteed his rights to the land, according to classical liberal theory; his claims should have been indisputable. Instead, the law robbed him of his right and executed him for witchcraft. This incident reveals not only the failure of Locke's natural use theory but also demonstrates, according to the narrator, "that the influential classes, and those who take upon themselves to be leaders of the people, are fully liable to all the passionate error that has ever characterized the maddest mob. Clergymen, judges, statesmen—the wisest, calmest, holiest persons of their day—stood in the inner circle round about the gallows..." (HOTSG 13). In other words, the hierarchical social order, which is based on status notions like a natural aristocracy and protection of the weak, is deeply flawed. The members who are purportedly more rational—or in Cooper's view, those who would be the proper stewards of the land—are just as likely to become entangled in irrational and unjust pursuits as any other segment of society.

The manipulation of the legal system to acquire and maintain land rights extends through each generation of the Pyncheons. Hepzibah and Clifford's cousin Jaffrey is referred to as a judge, tying him directly to the legal realm, and like his ancestors, he takes advantage of legal structures to attain his control of the family estate.<sup>9</sup> As a young man, Judge Jaffrey Pyncheon destroys the version of his uncle's will that names Clifford the rightful heir of the Pyncheon estate in order to legitimize the earlier version of the will that deeds the property to himself. He then arranges the scene of his uncle's death so that it Clifford is ultimately accused of murder, consequently resulting in Clifford's incarceration and Hepzibah's eventual descent into labor. Throughout the novel, those characters who are most closely associated with the law in the text use the legal system to unfairly gain property and perpetuate their advantage.

In addition to the Pyncheons' actions in the legal realm, the narrative itself repeatedly draws on legal rhetoric in order to underscore that the law is a social construction that is unable to judge fairly. The court of law cannot uncover and evaluate truth as consistently as the romance can. Reminding the reader that the feud between the Pyncheons and the Maules is local legend, rather than documented fact, the narrator warns, "It would be bold, therefore, and possibly unjust, to venture a decisive opinion as to its merits; although it appears to have been at least a matter of doubt whether Colonel Pyncheon's claim were not unduly stretched, in order to make it cover the small metes and bounds of Matthew Maule" (HOTSG 13, emphasis mine). The "evidence" against Colonel Pyncheon may not be sufficient for a court of law, but it is essential to understanding the trajectory of property in the text. Turning conventional reasoning on its head, Hawthorne asserts that the law, rather than the romance, is a tool that can be manipulated to achieve one's purposes, while the romance provides greater access to truth.<sup>10</sup> Additionally, it is only within the space of the romance, rather than the courtroom, that Clifford's innocence can be established. The narrator begins the explanation of Judge Pyncheon's involvement in Uncle Jaffrey's death cautiously: "Now it is averred—but whether on authority available in a court of justice, we do not pretend to have investigated—that the young man was tempted by the devil, one night, to search his uncle's private drawers...." (HOTSG 271). Yet again, the romance can provide and evaluate evidence that is not admissible in the court of law. The law puts faith in appearances, which can easily deceive people, just as Judge Pyncheon's appearance of innocence has fooled the town of Salem. Going by appearances, it is Clifford who seems guilty; his innocence can only be discovered from a mesmeric seer "who...put[s] everybody's natural vision to the blush" (HOTSG 270). Although evidence from a mesmeric seer is not admissible in court, it

alone can reveal the truth of Uncle Jaffrey's death. Thus, it is only by reading the romance, which is open to alternative forms of evidence and new ways of seeing, that the conniving tactics of the Pyncheon family—and natural aristocracy more generally—can be discerned.

### Market Ascendancy: Losing Ground at the House of the Seven Gables

Given the repeated insinuations that the upper class has become powerful only by controlling and manipulating the law, The House of the Seven Gables builds a case that the so-called “natural aristocracy” deserves to fall into decline. The market economy, with its equalizing tendencies, is overtaking the status-based system that has falsely elevated a certain group of devious men. Indeed, when the narrative opens, the Pyncheon family and its house are in a significant state of disrepair. The town is encroaching further and further upon the house, which is gradually succumbing to the pressures; as the narrator describes the changes: “The street having been widened about forty years ago, the front gable was now precisely on a line with it....Behind the house there appeared to be a garden, which undoubtedly had once been extensive, but was now infringed upon by other enclosures, or shut in by habitations and outbuildings that stood on another street” (HOTSG 30-31). The street acts as a site of commerce and exchange that has overtaken the space of the feudalistic House of the Seven Gables. Likewise, the garden, which represents an earlier economic period by symbolizing either domestic production or aristocratic leisure, is becoming rapidly overgrown. Although the house still remains separated from the commercial economy, its borders are being eroded by the external pressures of the market. This shift in space indicates a changing social landscape in which the Pyncheon's stronghold is quite literally losing ground.

The Pyncheon family is also endangered because it has refused to relinquish its aristocratic attachments and adapt to changing conditions. Over the years, the family's land claims have purportedly "resulted in nothing more solid than to cherish, from generation to generation, an absurd delusion of family importance....In the better specimens of the breed, this peculiarity threw an ideal grace over the hard material of human life....In the baser sort, its effect was to increase the liability to sluggishness and dependence...." (HOTSG 23). The luxury of wealth and power has transformed the Pyncheon family into unrealistic, lazy, and unresourceful people. Hepzibah, the last great champion of the family, even claims that the Pyncheons' uselessness is an essential part of the family's identity, and she takes pride in the family's "native inapplicability, so to speak...to any useful purpose" (HOTSG 73). All signs point to the family's imminent deterioration, and their aristocratic leanings seem outdated and even ridiculous relative to the increasingly commercial society.

While the House of the Seven Gables itself has served as an aristocratic stronghold, the Pyncheon family has made one concession to the commercial economy: a shop window, initiated by Hepzibah's great-great grandfather and promptly locked after his death. The great-great grandfather opens the shop to solve his family's economic difficulties; as the narrator explains, "instead of seeking office from the king or the royal governor, or urging his hereditary claim to Eastern lands, he bethought himself of no better avenue to wealth than by cutting a shop door through the side of his ancestral residence" (HOTSG 32). In other words, rather than depend on aristocratic entitlement, this Pyncheon family member embraces the new way to wealth, the commercial market. His skill as a merchant, combined with his love of cash, casts doubt on his Pyncheon blood:

...there was something pitifully small in this old Pyncheon's mode of setting about his commercial operations; it was whispered that, with his



own hands, all beruffled as they were, he used to give change for a shilling, and would turn a halfpenny twice over, to make sure it was a good one. Beyond all question, he had the blood of a petty huckster in his veins... (HOTSG 32)

The shopkeeper cannot be a “true” Pyncheon because of his ease in accepting the market. He is seen instead as a huckster or confidence man, and he and his shop window are considered a disgrace by subsequent generations of the Pyncheon family.

Therefore, when Hepzibah is forced to reopen the cent shop in order to save her generation of the Pyncheon family from financial danger, she does so with trepidation because she does not believe that she can engage with the cash economy without degrading her family’s stature. Unlike her great-great grandfather, she does not turn to the cent shop because she refuses to draw upon her aristocratic heritage. While he shunned help from noblemen, Hepzibah continues to hope that her aristocratic heritage will somehow save her. She imagines that a long-lost uncle, living a luxurious life in Britain or India, will attempt to bring her back to his home so that she will never have to work again. In her dream, she must decline his generous offer, presumably because of her responsibility to Clifford. She then imagines that a branch of the Pyncheon family has settled in Virginia, another aristocratic stronghold in Hepzibah’s view, and dreams that one of those male relatives will send her an annual remittance of one thousand dollars. Perhaps her greatest hope, though, is that the Pyncheons will finally be able to claim their land in the East and “instead of keeping a cent shop, Hepzibah would build a palace, and look down from its highest tower on hill, dale, forest, field, and town, as her own share of the ancestral territory” (HOTSG 63). Thus, unlike her great-great grandfather, Hepzibah hopes that she will be saved from market labor, and all of her dreams involve the restoration of a quasi-feudalistic order that will include her among its ranks.

The narrative, however, implies that there will be no going back in time—nor should there be. Just as the town is irrevocably encroaching on the house’s land, the progress of change cannot be reversed. Hawthorne’s novel, unlike The Pioneers, rejects nostalgia in favor of an optimism toward the new order. This optimism is usually articulated by Holgrave, who first appears in the novel immediately before Hepzibah reopens the cent shop. Hepzibah confides to Holgrave that she would rather be dead than laboring, and she exclaims remorsefully that now that she has opened the cent shop she can no longer be considered a “lady” (HOTSG 43). In response, Holgrave claims that opening the cent shop will enable her to discover that the people outside of the House of the Seven Gables are not monsters and specters, as she seems to fear. In addition, Holgrave tells Hepzibah that the opening of the cent shop will mark “ ‘one of the fortunate days of your life’ ” (HOTSG 43).

“It ends an epoch and begins one. Hitherto, the lifeblood has been gradually chilling in your veins as you sat aloof, within your circle of gentility, while the rest of the world was fighting out its battle....Henceforth, you will at least have the sense of healthy and natural effort for a purpose, and of lending your strength...to the united struggle of mankind. This is success.” (HOTSG 43)

This passage demonstrates vividly the two contrasting economies of Hawthorne’s narrative. Holgrave explicitly critiques Hepzibah’s faith in status, focusing on her dying “blood” and her declining “gentility.” The aristocratic elements of Hepzibah’s character are unhealthy and dysfunctional, according to Holgrave; they have removed Hepzibah from humanity and prevented her from achieving a sense of purpose. These shortcomings, in Holgrave’s view, are inextricably tied to Hepzibah’s attachment to a status-based order, and her entrance into the realm of contract and exchange will rejuvenate her. Holgrave apparently believes that women should increase family wealth not through status-based arrangements—like marriage—but through active participation in economic exchange.

Holgrave's predictions, while advocating exchange and fluidity, do not accurately foretell Hepzibah's experience with the cent shop. Because of her strong attachment to the Pyncheon ancestry, she is unable to adapt to the market. When her first customer—a young boy named Ned Higgins—enters the cent shop, she refuses payment from him because “her old gentility was contumaciously squeamish at sight of the copper coin, and besides, it seemed such pitiful meanness to take the child's pocket money in exchange for a bit of stale ginger bread” (HOTSG 50). On principle, Hepzibah resists anonymous sales in which all items have a non-negotiable price that must be paid. She exhibits not only a disdain for money but also an inability to accept the terms of exchange.<sup>11</sup> In other words, Hepzibah rejects the notion of contract on principle; “she operates in terms of noblesse oblige instead of the reciprocity of a market economy” (Goddu 121). Despite her objections to market exchange, Hepzibah quickly learns that she cannot survive on the dictates of status in a market economy. When the young boy returns for another gingerbread, Hepzibah realizes that she must charge him or she will have to provide him continually with free goods. Thus, with the opening of the cent shop, Hepzibah discovers not the joy of labor, but the greediness, dirt, and pettiness of the commercial economy. She is completely overwhelmed by her interactions with others and the unfamiliar world of market exchange. Interestingly, while Holgrave's predictions do not accurately foretell Hepzibah's experience with the cent shop, they also do not describe Holgrave's own fate. At the end of the novel, Holgrave does not unite himself with mankind, as he encourages Hepzibah to do when she opens the shop. Instead, after marrying Phoebe, he retreats from society to the Pyncheon's country seat. If the novel tracks Hepzibah's separation from her aristocratic roots, then it also charts Holgrave's turn away from his enthusiastic embrace of the market economy.

The Woman Question in The House of the Seven Gables:  
Narrative Perspective and Materiality

Much of the plot of The House of the Seven Gables prepares the reader for a rejection of Cooper's nostalgic plot, which envisioned a redemption of ancestral land through the establishment of a natural aristocracy. In Hawthorne's novel, the aristocracy is portrayed as outdated, useless, and often evil. The narrative seems to advocate their removal in favor of a more egalitarian and modern way of living. Yet by telling much of the story from Hepzibah's perspective, Hawthorne continually undercuts his dismissals of the aristocracy, as well as Holgrave's relentlessly positive depictions of the market. Even though Hepzibah is often made to seem slightly ridiculous, the narrative perspective replicates her point of view more consistently than any other character's. She is arguably the most sympathetic character in the novel, and indeed contemporary reviewers of the novel clearly saw her in this way.<sup>12</sup> Additionally, the only character who receives the narrator's open admiration is Phoebe, who is configured as a sort of domestic savior. The novel's sympathy with and focus on women foregrounds its central preoccupation: what will replace the status-based order? How will women and other "weaker" creatures be protected in a market economy? Although Hawthorne does not endorse a natural aristocracy, like Cooper does, he too is deeply concerned with the ascendancy of the market system—and particularly the consequences for women's position.

Even though Holgrave asserts that the market provides democratic opportunities, the narrator implies that the market relations are random and dehumanizing—perhaps not as manipulatable as the law, but certainly no more just. The narrator establishes this concern

early in the novel, with the warning: “In this republican country, amid the fluctuating waves of our social life, somebody is always at the drowning point” (HOTSG 39). Although the market contains a leveling power that can provide increased opportunity for the lower classes, it necessarily (and randomly) places some citizens at the brink of destruction.<sup>13</sup> By examining Hawthorne’s critiques of the market economy, we can situate the novel—and domestic novels more generally—within the broader category of what Mary Templin has termed panic fiction. Templin defines the genre as narratives written in the wake of antebellum economic crises and consequently driven by fears of speculation and credit.<sup>14</sup> Templin focuses on women’s fiction from the 1830s when defining panic fiction, but Hawthorne’s tale responds to similar social and economic forces—and, like other domestic fiction, does so by examining those forces’ effects on women’s lives.<sup>15</sup>

The most evident symbols of the harshness of the market economy in the novel are the Italian organ grinder and his monkey companion, who wander the streets of the town. The monkey, in particular, symbolizes the condition of the laboring classes in the market economy. He produces nothing, not even the ephemeral, melodious notes of the organ grinder. His relentless and repetitive actions that demand money from viewers serve as a stark distillation of labor in the market system. He works exclusively and greedily for cash, for which he has a rapacious desire, regardless of how much he has accumulated. Indeed, “you could desire no better image of the Mammon of copper coin, symbolizing the grossest form of the love of money” (HOTSG 146).<sup>16</sup> Critics have recently provided compelling insight into the monkey’s racial coding, highlighting Hawthorne’s association between “blackness” and the market economy.<sup>17</sup> Yet it is also important to note that the monkey is not the sole inhabitant of this depraved world; instead he is an embodiment of the

repulsiveness of the market economy: “Doubtless, more than one New Englander...passed by, and threw a look at the monkey, and went on, without imagining how nearly his own moral condition was here exemplified” (HOTSG 146). The monkey represents an entire society driven only by this desire for cash, a desire the narrator claims is spreading throughout New England. Although much of the novel presents greed as a sort of timeless motivation, extending across the generations of the aristocratic Pyncheon family, the monkey and his rapaciousness for money are distinctively new—an insatiable desire, aired openly in public, for what is materially worthless.<sup>18</sup>

As many critics have noted, Hawthorne’s solution for this depravity is domestic renewal, as embodied by Phoebe Pyncheon. When Phoebe arrives at the House of the Seven Gables, she is “widely in contrast” with the unkempt surroundings of “gigantic weeds...heavy projection[s]...and the timeworn framework of the door” (HOTSG 66). Phoebe effortlessly provides a variety of domestic services, including tending chickens, making corn bread, and brewing ginger beer. Many of her skills are associated with an agrarian economy in which the home was a site of production rather than consumption. Yet she is not simply a nostalgic icon, who represents an earlier period of women’s productive capacity that could protect the family from the encroaching market.<sup>19</sup> Although Phoebe is a sort of domestic angel seemingly unfazed by the dirt and somberness of the house, she also displays business acumen, running the cent shop with ease and adroitness. In her first conversation with Hepzibah, Phoebe informs her cousin that she has not come to receive protection or comfort from her relatives: “ ‘I mean to earn my bread. You know I have not been brought up a Pyncheon’ ” (HOTSG 66). She goes on to assure Hepzibah: “ ‘I am as nice a little saleswoman as I am a housewife’ ” (HOTSG 69). As such, Phoebe’s skills

include an inherited ability to sell goods—“a knack,” which she asserts comes “ ‘with one’s mother’s blood’ ” (HOTSG 69). Unlike Hepzibah, Phoebe does not see herself as destined for aristocracy, and she is not concerned with “falling” into labor and betraying her ancestors.

Phoebe can handle cash, but she can also create a home space—even out of the airy, immateriality favored by the market economy. When the House of the Seven Gables is emptied after Judge Pyncheon’s death, the organ grinder and monkey return, lingering at the quiet house hoping to see a sign of Phoebe. As the narrator explains:

These wanderers are readily responsive to any natural kindness—be it no more than a smile, or a word itself not understood, but only a warmth in it—which befalls them on the roadside of life. They remember these things, because they are the little enchantments which, for the instant—for the space that reflects a landscape in a soap bubble —build up a home about them. (HOTSG 255, my emphasis)

Phoebe’s gift for practical arrangement can create a home “in a soap bubble” for the transients who have been ignored and disadvantaged by the market economy. Her ability to create a solid home out of the air (within a “soap bubble”) also stabilizes and secures the “homeless” Holgrave and, by extension, the Pyncheon family property (HOTSG 157). Phoebe’s role is, as Joel Pfister claims, “to prevent the psychological universe of men from tumbling ‘headlong into chaos’ ” (HOTSG 148-49).

The “chaos” that men are in danger of falling into is an economy with no substance, with no source of material value. The novel’s male characters repeatedly ignore the dangers of cash, credit, and speculation; rather, they see the market economy as replete with opportunity and capable of radical social transformations. Even Judge Jaffrey Pyncheon, the most powerful member of the Pyncheon family, sheds his aristocratic attachments in favor of speculation, aligning himself more with “the grossest form of the love of money” than the Pyncheons’ inapplicability that Hepzibah values.<sup>20</sup> As the narrator claims, Jaffrey’s wealth

derives mostly from “railroad, bank, and insurance shares [in addition to] U.S. stock” (HOTSG 211). His wealth does not come from precious material goods, but from pieces of paper of varying values. But it is Holgrave, a Maule, who most vociferously champions market relations. Holgrave appears to be a consummate Jacksonian youth: he is a journeyman who rails against the inherited wealth of the upper classes, as when he exclaims to Phoebe:

“A dead man, if he happen to have made a will, disposes of wealth no longer his own; or if he die intestate, it is distributed in accordance with the notions of men much longer dead than he. A dead man sits on all our judgment seats; and living judges do not but search out and repeat his decisions...Whatever we seek to do, of our own free motion, a dead man’s icy hand obstructs us.” (HOTSG 162)

In Holgrave’s view, inheritance impedes free will and thwarts living men’s development. He advocates instead for a world repeatedly made anew—through the dynamics of what he believes is an equalizing market.

The male characters are, therefore, in danger of becoming like the new forms of wealth they admire: ephemeral, without basis or substance. The novel’s male characters are consistently associated with abstractions and immateriality, indicating that their embrace of cash and credit threatens their physical existence. Their fading presence reflects how, within the increasingly powerful credit economy, “personhood bec[omes] dangerously alienable, potentially appropriable by market relations” (Shamir 747). Holgrave’s main employment is the art of the daguerreotype. While the result of daguerreotypy may be tangible, the production process involves a mysterious engagement with the unseeable and unknowable, of which Hepzibah and Phoebe are particularly suspicious. Even the men with whom Holgrave associates are eccentric reformers who have “no taste for solid food” (HOTSG 152).

Clifford, like Holgrave, also asserts that old domestic structures should be torn down in favor



of less substantive models. As he states during the excitement of his railroad journey, “ ‘...it is my firm belief and hope that these terms of roof and hearthstone, which have so long been held to embody something sacred, are soon to pass out of men’s daily use, and be forgotten’ ” (HOTSG 229). Clifford is consistently depicted as detached from the physical. Unlike Hepzibah, whose age is represented by the wrinkles on her face, Clifford’s age is presented as a progressive lack of physicality—as a withering away; he is ghost-like in his old age. The separation of men from the corporeal corresponds with the new forms of immaterial wealth that attract them. As self-possession becomes separated from material property in the antebellum period, the men of The House of the Seven Gables are in danger of fading away.<sup>21</sup>

In contradistinction, the women in the novel perceive the dangers of substance-less wealth. They consistently reject rapid change and express anxiety about volatility and abstraction. For example, when Holgrave attempts to convince Hepzibah that the aristocratic titles that once “ ‘conferred privileges’ ” now “ ‘imply...restriction!,’ ” Hepzibah shuns his theories: “ ‘These are new notions.... I shall never understand them; neither do I wish it’ ” (HOTSG 46). Even though Phoebe does not share Hepzibah’s aristocratic upbringing, she too views Holgrave’s theories with doubt. Holgrave suggests to her his plan for property reform:<sup>22</sup>

“If each generation were allowed and expected to build its own houses, that single change, comparatively unimportant in itself, would imply almost every reform which society is now suffering for. I doubt whether even our public edifices—our capitols, state house, courthouses, city hall, and churches—ought to be built of such permanent materials as stone or brick. It were better that they should crumble to ruin once in twenty years, or thereabouts, as a hint to the people to examine into and reform the institutions which they symbolize.” (HOTSG 163)

Phoebe is made nervous by Holgrave's seemingly insatiable desire for change. She responds to his solution with dismay; she claims that it makes her “ ‘dizzy to think of such a shifting world,’ ” echoing the narrator's warnings that the increasingly powerful market economy means that “somebody is always at the drowning point” (HOTSG 163, 39). Throughout the novel, the women—rather than the men—are the characters who solve problems through practical action, and they are repeatedly connected to the material world of labor, production, and stability.

It is through Phoebe's domestic influence that Holgrave realizes that his theories of renewal, which are based on destruction, are misguided. He discovers instead that the generational renewal he seeks can come from marriage to the right woman. Yet Phoebe's preference for fixity causes her at first to decline Holgrave's marriage proposal. She tells him, “ ‘You will lead me out of my own quiet path. You will make me strive to follow you where it is pathless. I cannot do so. It is not my nature. I shall sink down and perish!’ ” (HOTSG 267). Phoebe refuses to depart from her path and subsequently drift into Holgrave's world of uncertainty. Holgrave responds by assuring Phoebe that her influence has caused him to perceive a new desire within himself: “to set out trees, to make fences—perhaps, even, in due time, to build a house for another generation—in a word, to conform myself to laws, and the peaceful practice of society. Your poise will be more powerful than any oscillating tendency of mine’ ” (HOTSG 267). Thus Phoebe enables Holgrave, the once radical property reformer, to claim and cultivate land, and in so doing, she offsets his oscillating tendencies—tendencies that clearly associate him with market volatility. As Gillian Brown claims, “Phoebe's salutary and salvific role signals the emergence of domestic womanhood as an antidote to the economic upheavals of nineteenth-century American

society which transport the Pyncheons from wealth to poverty and thence to new wealth” (HOTSG 108).

While critics such as Brown have discussed Phoebe’s domestic skills at length, I would like to emphasize how she restores stability through the marriage contract rather than through a simply nostalgic return to property cultivation, as Cooper advocates, or through some version of a separate spheres ideology. As the narrator indicates, Phoebe’s “exclusive patrimony” is “the gift of practical arrangement,” which enables her to “bring out the hidden capabilities” in her environment; in particular this gift allows her “to give a look of comfort and habitableness to any place” she calls home by enlivening items that seem to have “an old maid’s heart” (HOTSG 64). Thus, the narrator implies, Phoebe’s restorative powers are directly connected to her position as an available, unmarried woman. In other words, because Phoebe can marry, she alone can rehabilitate the decaying Pyncheon family.

Consistently, domestic novels of the mid-nineteenth century assert that women’s marriage choice is critically important for family identity and survival. When Phoebe marries Holgrave, she surrenders to him her stake in the family property, as Massachusetts state law required in 1851.<sup>23</sup> The marriage act, thus, reconciles the competing disputes surrounding the family land, and the Pyncheons are finally able to uncover the lost claim to the elusive eastern lands. These resolutions all depend on Phoebe’s marriage choice. Because Phoebe does not know Holgrave is a Maule when she agrees to marry him, her ability to choose the “right mate” depends more on her innate goodness, on her ability to discern who would be a suitable husband. Phoebe’s goodness serves a doubly positive function: it rehabilitates Holgrave as well as the Pyncheon family. For Hawthorne and for Cooper, the ability to withstand the instability of the market economy depends on women

marrying the “right man,” who will properly enact a status relationship by protecting and caring for his wife. Phoebe’s relationship to family property underscores the need for women to marry wisely; if they do not, that property is in danger of depletion. This danger of wealth depletion, due to men’s speculation, also captivated legislators and spurred the first wave of married women’s property reform.

Regardless of the property reforms, it was not legislators’ intention for wives to put their property in market circulation. As Alexander Gregory comments about legal theorists’ attitude about women’s property entering the market: “Market-alienability of women’s property, by creating the potential of reducing the wife’s dependency on her husband, represented too great a threat to maintaining the delicate equilibrium between stability and change” (HOTSG 181). Phoebe herself represents this delicate equilibrium. While a single woman, she is able to labor effectively in the market system and the private space. Once married, she is willing to give up her position in order to bolster her husband’s sense of self-possession. The marriage contract, therefore, requires that Phoebe relinquish her portion of the family estate, and in submerging her legal identity into her husband’s, the marriage contract also requires that she surrender property in her self. Thus, if land ownership can no longer provide Holgrave with adequate stability against market forces, his “ownership” of Phoebe can. This point is made explicitly when Holgrave reveals his identity by referring to the mechanics of coverture. He asks Phoebe, “ ‘[H]ow will it please you to assume the name of Maule?’ ” (HOTSG 275). Phoebe, then, sacrifices two kinds of ownership—ownership in property and ownership in her self—in order to bolster Holgrave’s own self-possession against increasingly powerful market forces. The nineteenth-century conception of the

marriage “contract” erased women’s self-possession and transferred it to their husbands, leaving the men able to interact in the market economy while preserving their fixity.

We can, perhaps, gain a clearer understanding of how women bolster status through Holgrave’s story about Alice Pyncheon. The entire story is imbued with an emphasis on status, and, in particular, status-based relationships pervade the Pyncheon household. Early in the story, the blacksmith Matthew Maule is summoned to the House of the Seven Gables by the Pyncheon’s black servant, Scipio. During their conversation, Maule mentions to Scipio that he looks forward to seeing Alice Pyncheon, to which Scipio responds with offense: “ ‘The low carpenter man! He no business so much as to look at her a great way off!’ ” (HOTSG 167). In a novel in which blackness is consistently a marker of a low class position, it is not surprising that Hawthorne uses a black servant to articulate the rules of stratification.<sup>24</sup> Clearly, Scipio abides by the dictates of status relationships, and he repeatedly disapproves of Maule’s indifference to such rules, like when Maule insists on approaching the House of the Seven Gables through the front, rather than the servants’ entrance. Holgrave describes the house as surrounded by the hustle and bustle of home economics, accomplished without cash exchange. The cook is standing outside the house “bargaining for some turkeys and poultry,” which implies negotiation rather than the anonymous sale of items with established value, like the knick knacks sold for an exact price at Hepzibah’s shop (HOTSG 168). The house’s affiliation with status is also indicated by the neatly dressed maid and the “shining sable face of a slave” easily visible from outside the house (HOTSG 168). The focus on status extends to the head of the household, Genoveyse Pyncheon, who is described as having spent a good deal of time in Europe, a symbol for aristocracy throughout Hawthorne’s fiction, and who is now married to a wealthy, landed

British woman. When the narrative begins, Genoveyse is hoping to purchase an English Earldom in order to secure his status as a true aristocrat. It is not surprising, then, that the narrator remarks that the house “seemed fit to be the residence of a patriarch” (HOTSG 168).

Through Genoveyse’s and Matthew’s interactions, Hawthorne implies that men view single women as the way to expand family wealth. In order to earn the money to purchase an Earldom, Genoveyse needs the claim to the Pyncheon’s eastern lands, and he believes Maule knows the location of the lost deed. Maule agrees to help on the condition that Genoveyse restore the Maule’s ancestral land (on which now sits the House of the Seven Gables). Genoveyse, believing that land in England will suit him better, gladly accepts, briefly imagining himself as Lord Pyncheon or the Earl of Waldo, further emphasizing Genoveyse’s association with status and aristocracy (HOTSG 176). The initial terms of their agreement, however, are quickly put aside, and instead Maule demands to speak with Alice Pyncheon before he will reveal the deed’s location, claiming “that the only chance of acquiring the requisite knowledge [is] through the clear, crystal medium of a pure and virgin intelligence” (HOTSG 177). After a moment of hesitation, Genoveyse capitulates to the new arrangement, justifying his decision as a concern for Alice’s future. He assures himself that acquiring the claim to the eastern lands will allow him to secure Alice’s aristocratic position and to enhance the prestige of the family:

And was it not for her sake far more than for his own that he desired [the plan’s] success? That lost parchment once restored, the beautiful Alice Pyncheon, with the rich dowry which he could then bestow, might wed an English duke or a German reigning prince, instead of some New England clergyman or lawyer! At the thought, the ambitious father almost consented, in his heart, that, if the devil’s power were needed to the accomplishment of this great object, Maule might evoke him. (HOTSG 181)

Genoveyse allows a blacksmith-wizard to speak with his daughter because he hopes to save her from a potential descent into middle-class American life. The eastern lands could ensure that Alice would marry a European nobleman rather than a respectable, but laboring, New England middle-class man. Like his male ancestors, Genoveyse intends to use underhanded means (even “the devil’s power,” if necessary) to increase the family’s wealth. Both men view women as a source for expanding wealth and improving class position.

Maule’s power undermines the protection that status relationships supposedly afford women. Alice, a “haughty” Pyncheon like her father, accepts Maule’s terms because she believes that her superior status provides her with her own power, “combined of beauty, high, unsullied purity, and the preservative force of womanhood—that could make her sphere impenetrable” (HOTSG 180). Alice’s gender, therefore, provides her with an inviolate privacy that can withstand Maule’s invasive powers. Even Maule invokes the Pyncheon’s belief in status when he assures them that Alice “ ‘will no doubt feel herself quite safe in her father’s presence, and under his all-sufficient protection’ ” (HOTSG 179, my emphasis). These claims reflect the theory behind status relationships—that white men can and will protect those who depend upon them. Yet, the Pyncheons’ faith in status does not protect Alice from Maule’s intrusion; her father even turns away from the proceedings until after Maule’s power “had laid its grasp upon her maiden soul...and her spirit passed from beneath her own control, and bowed itself to Maule” (HOTSG 185). Although Alice was supposedly protected by her race, her class, and her father’s stature, Maule’s invasive power reveals this protection to be useless.

Before the experiment, the worst fate Genoveyse could imagine for his daughter was that she might descend into middle-class American life. But after Alice succumbs to Maule’s

power, she falls to an even lower position than she would have occupied as the wife of a laborer; she becomes Maule's slave, the lowest status position possible. The mesmeric encounter between Maule and Alice, which was entered into with the hopes of expanding family wealth, results in the inversion of their own status relationships. In this way, mesmerism itself replicates the dynamics of a status relationship. It is not a dialogue between mesmerist and subject, but a one-way path of control, predicated on hierarchy rather than exchange. Although mesmerism is often associated with sexual control, the narrator makes it clear that Maule does not mesmerize Alice in order to turn her into his sexual victim. Soon after their encounter, Maule marries another woman, as if to underscore that his interest in Alice is not sexual, but social. Indeed, Maule does not seek to "crown [Alice's] sorrows with the grave of tragedy, but to wreak a low ungenerous scorn upon her" (HOTSG 185). As the language of this passage indicates, Maule wants to inflict a "low" punishment on Alice and the Pyncheon family; he aims to dismantle the social order that has falsely elevated the Pyncheons and marginalized the Maules. Instead of taking Genoveyse's land, Maule takes his daughter, thereby robbing Genoveyse of the ability to expand the family estate.

By telling Phoebe the story of Alice, Holgrave re-enacts the mesmeric encounter between Maules and Pyncheons in which the Maules sought to undermine the status order. Once Holgrave finishes the story, he recognizes in Phoebe "an incipient stage of that curious psychological condition, which as he had himself told Phoebe, he possessed more than an ordinary faculty of producing. A veil was beginning to be muffled about her, in which she could behold only him, and live only in his thoughts and emotions" (HOTSG 187). Unlike Matthew Maule, though, Holgrave apparently resists penetrating Phoebe's consciousness



because he possess a “rare and high quality of reverence for another’s individuality” (HOTSG 187). Still, in the story of Alice, there is an indication of Holgrave’s connection and continuity with his Maule ancestors. The parallel between Alice’s and Phoebe’s situation infuses Phoebe’s own story with an ambiguous quality: specifically, does Holgrave convince Phoebe to marry him by employing better skill and more restraint than his ancestor Matthew Maule, who abused his power to such an extent that he killed Alice? Regardless of the answer, Holgrave’s methods reveal a perpetuated view of women as an embodiment of family wealth and property.

Although Alice’s story (Holgrave’s tale) and Phoebe’s story (Hawthorne’s novel) possess disturbing parallels, Alice’s story has an antithetical end to the novel The House of the Seven Gables. There are no positive outcomes from her union with the Maule family. The deed to the eastern lands is not located, and by being rendered unable to marry, Alice cannot increase family lands through marriage, as a daughter in a status-based system could do.<sup>25</sup> Phoebe, on the other hand, is united to Holgrave through choice rather than coercion, and Holgrave does reveal to her the location of the deed. Yet Matthew Maule’s prophecy—that the Pyncheons would not receive the deed until the eastern lands became worthless—is also fulfilled, which Holgrave acknowledges after he has exposed the deed: “ ‘This is the very parchment the attempt to recover which cost the beautiful Alice Pyncheon her happiness and life....It is what the Pyncheons sought in vain, while it was valuable; and now that they find the treasure, it has long been worthless’ ” (HOTSG 275).

Despite her goodness and her ability to provide balance, Phoebe is unable to redeem the House of the Seven Gables or the Pyncheons’ ancestral lands. Phoebe does not save the family by transforming the house into a separate sphere—a peaceful, protected space from

the market economy. Instead, the new family abandons the House of the Seven Gables and removes to Judge Pyncheon's country seat. Even though the disputes surrounding the family's land have been settled, the family property does not serve as a stronghold against the volatility of the marketplace as it does at the end of The Pioneers. Instead, Hawthorne's novel implies that the market has simply become too powerful for the House of the Seven Gables to resist it effectively; as we have seen, the market has been slowly encroaching upon the dilapidated house. Rather than adapt to these changes, the house seems to combat the new forces with little success. Again, it is slowly losing ground to the market, which results in the house's compartmentalization and division. Each space in the house, it seems, can only contain one form of economic activity or labor. Throughout the novel, the narrator emphasizes the house's many divisions, partitions, and locked sections. It has been ruptured by the commercial world through the shop door, but this addition is just another division in the house. Alternatively, the Pyncheon's country seat is presented as a flexible and fluid space. As the new head of the family, Holgrave, who had once claimed that each generation should build its own house, embraces the country seat's adaptability. For his new home, he hopes that " 'every generation of the family might...alter the interior, to suit its own taste and convenience' " (HOTSG 274). Holgrave's statement positions interior decorating itself as a middle ground act, situated between complete destruction, as he had once advocated, and the stultification of the home space, as had existed at the House of the Seven Gables.

Despite the middle-ground quality of the Pyncheon's country seat, the novel concludes with a distinct reminder that patriarchy is the best form of protection for society's weakest members. Hawthorne, however, re-establishes the status order by returning to the character of Uncle Venner at the conclusion of the novel. Uncle Venner is a peculiar elderly

man who performs odd jobs along Pyncheon Street. He is the only male character in the novel who is aligned with older economic structures, and as such, he is very suspicious of the new market economy. When Hepzibah opens her cent shop, he gives her advice on how to manage her business. He relates his “golden maxims,” such as “Give no credit!...Never take paper money! Look well to your change!” (HOTSG 63). Throughout the novel, Uncle Venner talks repeatedly of retiring to his farm—a fantastical space of productive labor and respite from the market economy. Yet rather than return to an idealized agrarian past, Uncle Venner accompanies the Pyncheon’s to their country seat. As Phoebe insists, “You must never talk any more about your farm! You shall never go there, as long as you live! There is a cottage in our new garden—the prettiest little yellowish-brown cottage you ever saw; and the sweetest looking place, for it looks just as if it were made of gingerbread—and we are going to fit it up and furnish it, on purpose for you. And you shall do nothing but what you choose” (HOTSG 275-76). Phoebe reconfigures the Pyncheons’ role in society as that of providing protection rather than practicing exploitation or manipulation. Instead of being abandoned to his fantasies, Uncle Venner is supplied with a cottage in a garden—another middle ground space between the market he has been a part of and the farm he continually dreams of.

The novel’s conclusion solidifies Holgrave’s position as the patriarch of a family. Yet he is established not by land ownership, but through the status components of the marriage contract. Phoebe’s willingness to follow Holgrave’s guidance and let him “own her”—her willingness to embody the status relationship—provides fixity against the dangers of speculation. Although the final moments of the novel often confound readers, it allows

Hawthorne to incorporate Cooper's nostalgia plot while also recognizing the power—and the benefits—of market forces.

### Status, Property, and Annihilation in Pierre

Hawthorne's fiction of the market and the homespace ends in comedy—with a marriage—but it is in many ways a surprising ending. For much of The House of the Seven Gables, Hawthorne appears to be presenting a tale in which the outdated, aristocratic generation will be supplanted by the younger couple, who will happily join the market revolution occurring around them. Yet in the last quarter of Hawthorne's novel, he changes course. Rather than depicting the inevitable decline of the aristocratic order, he portrays both generations living together peacefully in a middle ground country estate, safe from encroaching market forces. Holgrave—the one-time market advocate who told Hepzibah that opening the cent shop would mark the best day of her life, who suggested that family estates should be routinely burnt to the ground—ultimately embraces the remnants of the older order, including an ancestral homespace that will be passed from one generation to the next. Although The House of the Seven Gables ends with marriage, it does not end the way most readers anticipate.

In contrast, Melville's fiction of the market and the homespace, Pierre, ends in devastating tragedy. By its close, all of the major characters are dead, and most are killed in disturbing outbursts of violence. Unlike Hawthorne, Melville finds no hope for a middle space between the dangerous market economy and the rural aristocratic estate. When Pierre decides to abandon the deeply patriarchal Saddle Meadows, he almost immediately removes

to the harsh urban environment of New York City, where everything is in danger of turning into cash.

These novels' fundamental differences can be attributed to the male characters' perception of status. The function of status, as Cooper's novels underscore, is to consolidate wealth and to ensure orderly property transmission. Over the course of The House of the Seven Gables, Holgrave—almost as if by magic—comes to understand and accept this. By marrying the right woman, he reconciles competing claims to the land, and in turn he himself is reconciled to the usefulness of status. Pierre, on the other hand, misunderstands the function of the status relationship. He sees within it only the ideals of protection, fixity, and legitimization, and he ignores its realities—the perpetuation of land claims through exploitation and manipulation of the law. To highlight the gap between the status ideal and the reality of status, Melville twists the earlier reconciliation plots of Hawthorne and Cooper. Rather than presenting a female inheritor who must make the right marriage choice, as Cooper and Hawthorne do, Melville offers a female un-inheritor and the puzzle of how to redeem her. Pierre attempts to do so by employing the ideals of status, and in the process he destroys himself and everyone he has vowed to love and protect.

In a recent examination of Pierre, Cindy Weinstein compellingly argues that the novel is propelled by the tensions between status and contract in antebellum America. Weinstein interprets Pierre's action as an attempt "to divest himself of his parents" and, indeed, of family altogether (161). As she claims, "All of the children in the novel seek to embrace an ideal of contract only to find that biology, indeed incest, awaits them" (160).<sup>26</sup> Although I agree with Weinstein that the uneasy interplay between contract and status is central to Melville's purpose in Pierre, I disagree with her point that Pierre hopes to contract a new

family—a family of choice—in an attempt to destroy his consanguineous attachments. Pierre begins the novel believing he lives in a world exclusively dictated by status.<sup>27</sup> But once Isabel enters his life, Pierre realizes that his attachments to his mother and to the Glendinning estate are mere functions of the law, rather than the idealized, affective ties of status. In other words, the trajectory of the novel traces Pierre’s resistance to the “fall” into contract. He escapes Saddle Meadows in order to reject contract, and in the city he attempts to construct a new world consisting only of the bulwarks of status relationships: consanguinity, protection, and irrefutable connection.

As Melville makes clear throughout the narrative, status is an aristocratic system rooted in ruthless violence and legal manipulation. Pierre, ignorant of this fact, hopes to adapt status to the context of democracy and domesticity, and he fails miserably. Yet Melville does not make clear exactly what the reader should make of Pierre and his pursuits. Is he a tragic hero or a naïve buffoon? Is status a valuable system that should be preserved, or is it a pernicious legal construct that justifies oppression? Does status make sense of human relationships or hopelessly confuse them? Rather than offer answers to these questions, the narrative voice in *Pierre* continually reorients the reader in order to underscore the complexity—and perhaps futility—of the questions at hand. This narrative ambiguity mirrors Pierre’s own struggles with textuality and interpretation. Through Pierre’s resistance to contract Melville explores the instability of written language.

The narrative traces Pierre’s fall from the status ideal and his desperate and ill-fated attempts to reconfigure status in the city. When the novel opens, Pierre’s mother, Mary, expects that Pierre will marry a virtuous woman and carry on the tradition of his noble Glendinning forebears. Pierre’s betrothed, Lucy Tartan, is just such a woman. She is sweet,

docile, and blue-eyed, and she adores Pierre as much as his mother does. However, Pierre's idyllic world is disrupted when he meets the dark-haired Isabel, who claims that she is Pierre's half sister—an illegitimate child of Pierre's father. The revelation disrupts Pierre's notions of family, honor, and nobility—in other words, his notions of status. He decides that he must “legitimize” Isabel, to whom he is peculiarly attracted, and does so by pretending to marry her and moving to the city. After Pierre's supposed marriage, Mary Glendinning disowns him and transfers the Glendinning family estate to Pierre's cousin and rival, Glen, before she becomes insane and dies. This incident only marks the beginning of the downfall of the Glendinning family. In a confrontation at the end of the novel, Pierre kills Glen and is then arrested. When Lucy and Isabel visit him in jail, Lucy dies of grief, and then Pierre and Isabel drink poison. The novel ends with Isabel draped over Pierre's body, proclaiming “ ‘All is over, and ye knew him not’ ” (Pierre 362). The novel ends, then, with the destruction of the entire Glendinning line and with no one left to become the steward for the family property. Rather than restoring the family and its status ideals, Pierre destroys it.

#### Land, Inheritance, and Stability: The Legends of Saddle Meadows

The novel opens with a consideration of the American family, property ownership, and stability. As in The House of the Seven Gables, Pierre's narrator expresses anxiety about security and fixity among tremendous change: “With no chartered aristocracy, and no law of entail, how can any family in America imposingly perpetuate itself...In our cities families rise and burst like bubbles in a vat” (Pierre 9). The narrator asks how families can maintain

their wealth and stature over time, and then quickly dispels that worry by claiming that America's instability might also be the source of its rejuvenation:

For indeed the democratic element operates as a subtle acid among us; forever producing new things by corroding the old....Herein by apt analogy we behold the marked anomalousness of America; whose character abroad, we need not be surprised, is misconceived, when we consider how strangely she contradicts all prior notions of human things; and how wonderfully to her, Death itself becomes transmuted into Life. So that political institutions, which in other lands above all things intensely artificial, with America seem to possess the divine virtue of a natural law; for the most mighty of nature's laws is this, that out of Death she brings life. (9-emphasis added)

In this quotation, the narrator asserts that America's exceptionalism can be found in its ability to transform death into life. This belief mirrors the optimism within The House of the Seven Gables: an old order is destroyed in order to give rise to a new family. Through the death of one family and the abandonment of its ancestral dwelling, a new family is born; the romance of property becomes the romance of rebirth. Yet the "most mighty of nature's laws," as Melville describes it, will fail completely in the plot of Pierre. Unlike The House of the Seven Gables, Pierre ends in death for all of the major and even many of the minor characters. The valuable Glendinning property is left with no one to manage it; no new family is poised to revive the land.

The Glendinning family establishes its claims to ownership in the same way that the Temple and Pyncheon families do: the land is secured by racial violence and perpetuated through marriage and inheritance. In Pierre, the Glendinning family acquired its land first by defeating the Indians and, then, during the Revolution, by combating the "repeated combined assaults of Indians, Tories, and Regulars" (Pierre 6). Rather than obscure or justify the violence as in The Pioneers or The House of the Seven Gables, Melville emphasizes the American aristocracy's dependence on violence and oppression for its ascendancy. He



“repeatedly alludes to the centuries-long struggle for possession of the American land.

Melville examines how this kind of history is obscured and how the landscape is transformed” (Otter 177).

America’s great families, according to the narrator, will match England’s nobility, because of their violence, marriage choices, and mastery of the law. In order to prove that America’s “large estates” and “long pedigrees” will rival England’s, the narrator points to:

...the old and oriental-like English planter families of Virginia and the South; the Randolphs, for example, one of whose ancestors, in King James’ time, married Pocahontas the Indian Princess, and in whose blood therefore an underived aboriginal royalty was flowing over two hundred years ago; consider those most ancient and magnificent Dutch Manors at the North...whose haughty rent-deeds are held by their thousand farmer tenants, so long as grass grows and water runs; which hints of a surprising eternity for a deed, and seems to make lawyer’s ink unobliterable as the sea. (*Pierre* 10-11)

This quotation highlights how native claims to the land are covered over by the act of marriage and the system of coverture, which, as we have seen, unite competing landholders and ensure transmission of wealth across generations.<sup>28</sup> The narrator immediately follows this description with a reference to the Dutch landowners in the North who gain property by using the law to create “haughty rent-deeds” that increase the wealth of their estates. By comparing the two kinds of aristocratic families—the European settlers united with Indian royalty in Virginia and the Dutch landowners in the North—Melville creates an analogy between using the exploitation of women in marriage and the exploitation of a “thousand farmer tenants.” Lurking just beneath both descriptions is the specter of violence that was used by wealthy white settlers to subdue Native Americans and to subdue unruly farmer tenants. By harnessing the power of the law, however, these families appear entitled to their wealth and privilege.

The Glendinning family explains its own ascent through the myths of status rather than through disturbing tales of legal manipulation and violence. These stories depict Pierre's male relatives as brave and virile, rather than violent and oppressive. Pierre's great-grandfather is widely considered a hero; his military activity secured the land of Saddle Meadows for the Glendinning family. However, Saddle Meadows received its name because it marked the spot where Pierre's great-grandfather fell from his horse in battle and died, while his men charged on to victory. In other words, the land is named as much for the site of the patriarch's failure as it is for his victory, an irony that the Glendinnings seem all too capable of ignoring.

While the legends surrounding the Glendinning ancestors seem to embody the ideals of status, the narrator continually undermines these legends by returning to moments of violence and exploitation. For example, Pierre's grandfather, for whom Pierre was named, appears unusually able to be merciless on the battlefield and yet tender at home:

...in the night-scuffle in the wilderness before the Revolutionary War, he had annihilated two Indian savages by making reciprocal bludgeons of their heads. And all this was done by the mildest hearted, and most blue-eyed gentleman in the world, who, according to the patriarchal fashion of those days, was a gentle, white-haired worshiper of all the household gods; the gentlest husband, and the gentlest father; the kindest of masters to his slaves.... in fine, a pure, cheerful, childlike, blue-eyed, divine old man; in whose meek, majestic soul, the lion and the lamb embraced.... (Pierre 30)

Pierre's grandfather, then, is presented as an ideal mixture of violence and kindness; he can seemingly draw on the different parts of his personality depending on his particular sphere of action. The grandfather's image as a domestically docile military hero is disturbed, however, when the narrator discusses the treatment of the slaves at Saddle Meadows: "[But] woe to...his stable slaves, if grand old Pierre found one horse unblanketed, or one weed among the hay that filled their rack. Not that he ever had...any of them flogged—a thing unknown

in that patriarchal time and country—but he would refuse to say his wonted pleasant word to them....” (*Pierre* 30). This passage begins with a stern and serious warning to the slaves lest they make even the tiniest mistake on the Glendinning property, and is quickly followed by the improbable assertion that these slaves were never beaten during the grandfather’s lifetime. The description of the grandfather seems designed to emphasize the impossible, contradictory qualities that the grandfather has, and it undermines the portrayal of the grandfather as a gentle master. The passage about the slaves is particularly pointed because of how it implicates Pierre’s grandfather’s domestic behavior. The master-slave relationship was a status relationship that was built on the same principle as the relationship between husband and wife.<sup>29</sup> Status relationships were based on the premise that the white man, as the most rational and strongest being, should guide and protect those who are weaker. In revealing Pierre’s grandfather’s short temper toward his slaves, the narrator implicates the grandfather’s attitude toward his family. Thus, the narrator’s depiction suggests that the family’s noble vision of the grandfather as both a military hero and gentle household master is distorted, inaccurate, and even impossible. Just as the legal discourse of the period presented an idealized description of status relationships, the Glendinning family legends perpetuate an ideal view of status, in which a man, infamous for his violence on the battlefield, can channel his anger into mere verbal admonishments at home.

### The Fantasies of Status

Raised in a home saturated with the inherited signs of military might, Pierre cherishes the hope of finding his own opportunity to become the male protector. His grandfather’s

military prowess seems literally to fill the house. The family has hung military banners that Pierre's grandfather captured on the battlefield, and Pierre essentially plays dress up with his grandfather's military accoutrements. The patriarchal environment of Saddle Meadows sparks "ten thousand mailed thoughts of heroicness...in Pierre's soul, [and] he glared round for some insulted cause to defend" (*Pierre* 14). Isabel's sudden appearance in Pierre's life provides him with the opportunity to live out these status-based fantasies, particularly his long-held wish to have a sister to defend: " 'Oh, had my father but had a daughter!...some one whom I might love, and protect, and fight for....It must be a glorious thing to engage in a mortal quarrel on a sweet sister's behalf!' " (*Pierre* 7). Therefore, Pierre, desperate to act out the ideals of status, is long ready to believe Isabel's story.

From the moment he receives Isabel's letter, Pierre believes that he can serve as her much-needed protector. He realizes that in opening it, he will commit himself to her redemption, but will also forever distance himself from his mother. The letter in essence divides him against himself:

One [half] bade him finish the selfish destruction of the note; for in some dark way the reading of it would irretrievably entangle his fate. The other bade him dismiss all misgivings; not because there was no possible ground for them, but because to dismiss them was the manlier part, never mind what might betide. This good angel seemed mildly to say—Read, Pierre, though by reading thou may'st entangle thyself, yet may'st thou thereby disentangle others. Read, and feel that best blessedness which, with the sense of all duties discharged holds happiness indifferent. The bad angel insinuatingly breathed—Read it not, dearest Pierre; but destroy it, and be happy. (*Pierre* 63)

The power of text is evident in this moment. Pierre understands that in simply reading the letter he will be bound to its narrative and to fulfilling his status obligations to this woman, whatever they may turn out to be. Even this early in the novel, Pierre also recognizes the ambiguity of his position: to act according to the good angel's wishes will provide him with

the “best blessedness” of being unhappy. Indeed, reading the letter produces instant change in Pierre. He immediately remembers a long-suppressed memory: his father’s mysterious cries for a daughter on his deathbed. Thus, instead of questioning Isabel’s narrative, he quickly integrates it into his family’s history. He believes that he can instinctually divine the letter’s truthfulness: “ ‘I feel that nothing but Truth can move me so. This letter is not a forgery. Oh! Isabel, thou art my sister; and I will love thee, and protect thee, ay, and own thee through all’ ” (Pierre 66). Here, then, Pierre’s mission is articulated. His reaction to the letter is to articulate the tenets of the status relationship: love, protection, and ownership. In Isabel, Pierre recognizes his status fantasy.<sup>30</sup>

The problem with status, according to Melville, is that while it purports to create distinct relationships and responsibilities, it always produces a confusion that easily leads to misplaced lust and even incest. Pierre’s misplaced lust for Isabel is established early in the novel, when the narrator asserts that a sister is a precursor to a wife: “For surely a gentle sister is the second best gift to a man; and it is first in point of occurrence; for the wife comes after. He who is sisterless, is as a bachelor before his time. For much that goes to make up the deliciousness of a wife, already lies in the sister” (Pierre 7). Pierre, raised in a world permeated by relationality, has nowhere and yet everywhere to channel his sexual desire. Throughout the novel, Pierre is plagued by confused relationships with women. Lucy is his betrothed but also his sister. He calls his mother his sister, but he also imitates a marriage relationship with her. As Michael Rogin points out, “By playing at brother and sister, Pierre and his mother are imitating the ideal form of marriage. The resulting confusions of brother with husband, husband with son, and mother with sister and wife make sex a threat to all the

pairings” (164). Thus, Pierre’s decision to pretend to marry his sister makes sense in the context of the confused relations of status:

[P]ossibly the latent germ of Pierre’s proposed extraordinary mode of executing his proposed extraordinary resolve—namely, the nominal conversion of a sister into a wife—might have been found in the previous conversational conversion of a mother into a sister; for hereby he had habituated his voice and manner to a certain fictitiousness in one of the closest domestic relations of life...this outward habituation to the above-named fictitiousness had insensibly disposed his mind to it as it were. (*Pierre* 176-77)

The slippage in the relationship with his mother foretells a slippage in other domestic relations. For example, Pierre consistently configures Isabel as a child, even though he knows she is older than he is. To him, she is a “child of everlasting sameness” (*Pierre* 140). Isabel also agrees that, with Pierre, she “must always continue to be a child” (*Pierre* 148). Pierre then fulfills every domestic male role for Isabel simultaneously: brother, “husband,” and even father.

### To Create the World Anew: The Search for Status in the City

Pierre’s decision to marry Isabel in the hopes of fulfilling the status ideal awakens Pierre to the contractualism that underpins his life at Saddle Meadows. Before meeting Isabel, Pierre apparently thinks nothing of the fact that his father’s will does not mention him. His mother controls the family property, even though the twenty-one year old Pierre is entitled legally to own much of the property in his own name. Pierre is unconcerned with his legal ownership at the beginning of the novel because he sees his paternity literally inscribed onto the landscape: “...the beautiful country around Pierre appealed to very proud memories....[I]n Pierre’s eyes, all its hills and swales seemed as sanctified through their very

long uninterrupted possession by his race” (Pierre 8). For Pierre his inheritance is irrefutable, and the legal mechanics are irrelevant and incidental. What Pierre ignores and the narrator emphasizes is that the Glendinning claim to Saddle Meadows is secured by law; Saddle Meadows is in fact saturated with lawyer’s ink, “as unobliterable as the sea” (Pierre 22). In other words, Pierre idealizes status by ignoring the inextricable relationship between written law and property ownership.

Once Pierre announces his “marriage” to Isabel, Mary’s contractual, rather than status-based, relationship to Pierre is clear and unmistakable. She promptly disinherits him, severing her ties with him as if they were as easy to renegotiate as the terms of a contract. Pierre, however, refuses to take his mother to court because he hopes to protect the family reputation; he still seems immersed in a status-based understanding of the world:

And though Pierre was not so familiar with the science of the law, as to be quite certain that the law, if appealed to concerning the provisions of his father’s will, would decree concerning any possible claims of the son to share with the mother in the property of the sire; yet he prospectively felt an invincible repugnance to dragging his dead father’s hand and seal into open Court, and fighting over them with a base mercenary motive, and with his own mother as the protagonist. (Pierre 180)

Pierre simply cannot bear to transform his mother into a “protagonist,” a contracting agent acting on her own behalf. Even after she has rejected him and denied his lineage, Pierre clings to a status-based view of their relationship.

After deciding to “marry” the unpropertied Isabel, Pierre awakens to the power of the law; in many ways, this decision marks Pierre’s fall into the world of contract, which he reacts to by desperately trying to create a new world of status. Indeed, once Pierre becomes the domestic hero, he seems unable to stop. Initially, he intends to leave Saddle Meadows with Isabel alone, but he soon agrees to take the rejected fallen woman, Delly Ulver, with them. Later in the novel, Pierre allows Lucy Tartan to join them, living under his protection.

Pierre, then, hopes to form a status enclave within the epicenter of the contractual economy: New York City. Thus, Pierre's attempts to embody the status ideal—marrying his sister, and striving for protectionism within the city—seem doomed to failure from the start. However, he relentlessly rejects the pervasiveness of contract, which becomes increasingly associated with any textual remnant in the novel.

Pierre's plan—that Isabel will pretend to be his wife—is never written out as an agreement; it is only suggested through a whisper in her ear, to which the reader has no access. As opposed to a contract, their arrangement involves no terms, negotiations, or stipulations, and because the marriage is not real, there is of course no ceremony to sanctify it by law. In other words, Pierre and Isabel's relationship is based solely on a belief in consanguinity and status. Appropriately, Isabel and Pierre experience their connection to one another immediately and viscerally. When Isabel first sees Pierre, she screams in such a terrible way that the shriek of recognition haunts Pierre:

...[her] face somehow mystically appealing to his own private and individual affections; and by a silent and tyrannic call, challenging him in his deepest moral being, and summoning Truth, Love, Pity, Conscience, to the stand. Apex of all wonders! Thought Pierre; this indeed almost unmans me with its wonderfulness. Escape the face he could not. (Pierre 49)

These instinctive signals of intimacy cannot be comprehended or used as proof in a court of law. They do not exist in the writing of a contract. Yet the signal of connection is so strong that Pierre believes he cannot doubt its veracity. Pierre and Isabel's relationship, therefore, seems to represent a kind of ultimate consanguinity and familial connection.

Isabel and Pierre's relationship is repeatedly configured around images of blood and a profound feeling of irrevocable connectedness. They seem irresistibly attracted to one another, connected by an unspoken bond:



Often, in after-times with her, did he recall this first magnetic night, and would seem to see that she then had bound him to her by an extraordinary atmospheric spell—both physical and spiritual—which henceforth it had become impossible for him to break, but whose full potency he never recognized till long after he had become habituated to its sway. (Pierre 151)

Here, Isabel appears to mesmerize Pierre, making him not a contracting agent but a victim.

In his portrayal of their attraction, Melville recasts the mesmeric relationship from Hawthorne's The House of the Seven Gables in which Matthew Maule invades and controls Alice Pyncheon's consciousness. In The House of the Seven Gables, Alice is controlled by the powerful male forces around her, and she acquiesces to her father's demands and then becomes enslaved to Maule's magnetic powers. In Melville's text, the mesmeric attraction seems reversed, with Pierre subjected to the power of the women around him—first his relationship with his mother and then with Isabel. Again, Pierre understands his relationship with Isabel as unavoidable, inevitable, and non-negotiable; it is almost the perfect antithesis of contract.

Unlike Pierre, Isabel inhabits a world completely devoid of relationality. While Pierre is born into an over-domesticated patriarchal stronghold, Isabel is born into a haunted ruin devoid of affection.<sup>31</sup> She tells Pierre that she had no understanding of relational words like mother and father during her childhood. Her story begins with the statement, “ ‘I never knew a mortal mother. The farthest stretch of my life's memory can not recall one single feature of such a face’ ” (Pierre 114). Isabel's story consists of a string of un-domestic details: from an absent mother to a decaying home space. As she tells Pierre, “ ‘My first dim life-thoughts cluster round an old, half-ruinous house in some region, for which I now have no chart to seek it out. If such a spot did ever really exist, that too seems to have been

withdrawn from all the remainder of the earth' ” (Pierre 114). Isabel’s connection to family is broken, crumbling, and rotting—the real, but hidden, state of Saddle Meadows.

While Pierre’s inherited mementoes do not need writing to connect him to them, Isabel’s family mementoes are covered in writing that is mysterious and indecipherable. The one artifact she has from her father is an embroidered handkerchief he leaves behind after a brief visit. Because Isabel cannot yet read, she cannot decipher the writing—or the identity of her father. She instead stores the handkerchief until she will be able to read and decode it for herself: “ ‘I folded it in such a manner, that the name was invisibly buried in the heart of it, and it was like opening a book and turning over many blank leaves before I came to the mysterious writing, which I knew should be one day read by me, without direct help from any one’ ” (Pierre 146). Just as she believes that one inscrutable object represents her father, she believes another mysterious object—a guitar—seems to represent her mother. Like the handkerchief, it is inscribed with un-interpretable writing: this time Isabel’s own name is delicately etched in gilded letters within the guitar. When Pierre expresses skepticism about the significance of the name in the guitar, Isabel responds: “ ‘The secret name in the guitar thrills me, thrills me, whirls me, whirls me; so secret, wholly hidden, yet constantly carried about in it; unseen, unsuspected, always vibrating to the hidden heart-strings....I have no slightest proof—but the guitar was hers, I know, I feel it was’ ” (Pierre 149). The initials on a handkerchief and the faint etching in a guitar convince Isabel that she is a Glendinning. She insists to Pierre that her heart resembles these items, that it too consists of writing that foretells her connection to Pierre. Like the writing on the objects that connect her to her parents, the “writing” that connects her to Pierre cannot be seen and read: “ ‘Oh, my dear brother—Pierre! Pierre!—could’st thou take out my heart, and look at it in thy hand, then

thou would'st find it all over written, this way and that, and crossed again, and yet again, with continual lines of longings, that found no end but in suddenly calling thee' ” (Pierre 158).

Isabel is raised in—and continues to perpetuate—an environment devoid of text, of writing, and of signification. Instead, she inhabits a world of instinct, feeling, and a responsiveness to blood relationships that makes contract irrelevant. She represents the ideal opportunity for creating a world that needs no contracts. Pierre, therefore, joins with Isabel in the hopes of perpetuating his utopian, status-based view of relationships. Unfortunately, he chooses the city as the site for his retreat—another foolhardy move by a character who believes that pretending to marry his sister will allow him to legitimize her while simultaneously protecting his family's reputation.

### Wages, Labor, and Annihilation in the Urban Space

After fleeing the world of contract at the heart of Saddle Meadows, Pierre finds that he can no longer transform text into commodity, as he had done so successfully as an author at Saddle Meadows. As he prepares to depart for the city, Pierre's hopes for financial success “were based upon his presumed literary capabilities” (Pierre 260). At that time, wages made Pierre feel “confident, that if need should come, he would not be forced to turn resurrectionist, and dig up his grandfather's Indian-chief grave for the ancestral sword and shield, ignominiously to pawn them for a living! He could live on himself” (Pierre 261). After breaking with his mother, he delighted in burning his inherited tokens as a means of rebirth and self-determination; we find here, though, that Pierre would rather destroy such

tokens than commodify them and convert them into cash. Pierre encounters similar difficulty with commodification when he finally attempts to “live on himself.” The problem of alienated labor, of losing oneself in wage-earning work, pervaded nineteenth-century American culture. Pierre recognizes that writing requires that he “send his soul off to labor,” but just as with his inherited tokens, he fails to convert his alienated soul into cash (Pierre 261). Although he spends seemingly innumerable, grueling hours writing, he never finishes his great book; in fact, once he leaves Saddle Meadows, he never again sells anything that he writes. Instead, Pierre pours his blood and soul into “a larger and...infinitely better book” that is written “for [his] private shelf” alone (Pierre 304). He refuses to circulate through exchange the “soul” that is contained in his book. In Pierre’s relationship to cash and wage labor, we see a resistance, rather than acceptance, of contract economy. Pierre, like other men in the nineteenth century, fears the instability of the market economy and searches for stability—a stability that he hopes to find in his status-based relationship with women.

Soon after arriving, Lucy insists that she should contribute to the upkeep of the household, and so she decides to paint and sell portraits of interested patrons at the Apostles. Pierre immediately positions himself as Lucy’s business intermediary. He dictates the terms of her engagement, and he discourages her from accepting credit, commanding that she should only accept cash upfront. She clearly has not engaged in monetary transactions before because Pierre admonishes her: “ ‘don’t start so at that [word] cash’ ” (Pierre 332). It is important to note that Lucy’s activity fits in with prevailing views of acceptable woman’s work, and she plans not to keep this money for herself, but to turn it over to Pierre for management.

When Isabel hears of Lucy's plans, she recognizes that she has not contributed money to the household and informs Pierre that she, too, will earn money. " 'Pierre, some way I must work for thee! See, I will sell this hair; have these teeth pulled out; but some way I will earn money for thee!' " (Pierre 333). Isabel, like Pierre, interprets earning wages as converting her body into cash. When she suggests that she can teach the other members of the Apostles the guitar, Pierre objects: " '[T]hou art the mistress of the natural sweetness of the guitar, not of its invented regulated artifices; and these are all that the silly pupil will pay for learning. And what thou hast can not be taught' " (Pierre 334). According to Pierre, Isabel's skills cannot be alienated away from her and transformed into earnings, no more than her hair or teeth can be. The characters' conception of wages indicates a deep uneasiness with the terms of contract. The only route they see for accumulating cash is to convert material goods or the body into money, a dangerous activity that requires a male intermediary. Despite their efforts to convert themselves into cash, there is a continual sense that Pierre's den of protected women cannot survive.

Melville does provide an oft-overlooked foil for Pierre's urban experience through the figure of Charlie Millthorpe, who succeeds in his attempts to combine paternalism and contractualism. Like Pierre, Charlie grew up in Saddle Meadows, and he shares a sense of Pierre's aristocratic privilege. Even though Charlie's father was tenant farmer rather than a member of the landed class, he can "loosely and unostentatiously" trace his ancestors back to an English knight (Pierre 275). Regardless of his purportedly noble origins, Charlie is marked by labor: "The delicate profile of his face, bespoke the loftiest aristocracy; his knobbed and bony hands resembled a beggar's" (Pierre 275).<sup>32</sup> When his father dies, he sells all of his family's possession: their animals, their tools, indeed "almost every movable thing

on the premises” becomes “convert[ed]...into cash” in order to fund his impending move to the city (Pierre 279). Like Pierre, Charlie is the only male in his family, and he too attempts to become a beneficent patriarch in the city. He promises his mother and three sisters that he will be a “second father and a careful provider” (Pierre 279). If the Glendinning family’s faith in aristocratic lineage seems significant in the narrator’s view, Charlie’s faith in it is made to seem ridiculous. Charlie’s belief in his nobility appears foolish, particularly because it convinces him to reject physical labor and abandon the land that his family rents. Charlie’s decisions, like Pierre’s, portend disaster. He sells all of his family’s belongings because his distant relation, a British knight, convinces him that he is entitled to a better life. Like Pierre, Charlie paradoxically attempts to reinstate his patriarchal position within the vagaries of urban space and wage labor.

And yet in almost every way that Pierre fails, Charlie succeeds. Working as a copyist, Charlie occupies “a small dusty law-office on the third floor of the older building of the Apostles; assuming to be doing a very large, and hourly increasing business among empty pigeon-holes...his mother and sisters dwelling in a chamber overhead” (Pierre 280). Within one building, he has a separate space for his work and a separate space for his domestic life. He supports himself through his employment, but as he says, “ ‘I can not waste my oil over bonds and mortgages’ ” (Pierre 281). So, after work, he devotes himself to philosophical discussions and metaphysical endeavors. His entire existence is compartmentalized—paid employment versus philosophical engagement, work versus domesticity. Charlie’s success, though, may be because he refuses to engage in the one activity that Pierre seems unable to resist: marriage. As he tells Pierre, “ ‘The great men are all bachelors, you know. Their family is the universe’ ” (Pierre 281). Even though Charlie

serves as the protector for his sisters and mothers, he never confuses them with his wife. Just as he is able to compartmentalize his labor from his soul, his job from his home life, Charlie is able to distinguish between his sister and his wife.

Unlike Charlie, Pierre—with his deep aristocratic attachments—cannot convert his family heirlooms into cash. He seems hemmed in by the family possessions, unable to escape his attachment to them. His status, as supposed heir to the Glendinning land and character, is in fact his destiny, whereas Charlie, who has no real status, has no real destiny. Melville attributes much of Charlie's success to "Fate," a powerful, inexplicable, and unbeatable force in the novel:

But some mysterious latent good-will of Fate toward him, had not only thus far kept Charles from the poor house, but had really advanced his fortune in a degree....it is often to be observed of the shallower men, that they are the very last to despond. It is the glory of the bladder that nothing can sink it; it is the reproach of a box of treasure, that once overboard it must down. (*Pierre* 279)

Melville's prediction for America uses the same drowning imagery as Hawthorne's depiction of survival in the market economy—that someone is always at the drowning point. In Melville's view, that person is always the most substantial and significant person, while the shallowest will always float above. Thus, the market is not hopelessly random and indifferent. Rather, it destroys the most profound men.

At the close of the novel, Pierre's attempts to flee the world of contract and erect a status-based enclave clearly have failed. Though he had hoped to protect and defend Isabel, Lucy, and Delly as a heroic man should, he succeeds only in killing his cousin, an act which accomplishes little but to seal the destruction of the Glendinning family. Pierre never attains the position of his forefathers. He does commit violence, but he always remains marked with a gentleness that prevents him from enacting the role of the ideal protector and patriarch.

When Pierre is found dead in his jail cell, his friend Charlie responds, “ ‘Hand scorched with murderer’s powder, yet how woman-soft!’ ” (Pierre 362). In his efforts to fulfill the role of the ideal man, his body has remained ambiguous, neither wholly male nor wholly female. Ironically, it is Isabel (with her masculine hands) who performs the final act of the novel, supplying the poison for Pierre’s suicide and speaking the last word on his fate. As she dies, her body collapses on top of Pierre, and her hair covers him completely. The novel ends, then, with an image that subverts the status relationship: the “married” woman’s identity covers over the man’s. Melville insists repeatedly throughout the novel that status is deceptive and certainly not a source for stability or fixity. Indeed, there is ambiguity within gender, ambiguity within the law, ambiguity within domestic relations and domestic power. Pierre—and ultimately all of the Glendinnings—are destroyed because their faith in status has no place in a commercial world of contracts and commodities. Melville borrows from Cooper’s and Hawthorne’s plots in order to condemn their hope in women’s status and the restoration of a natural aristocracy as pure nostalgia. Pierre finds no retreat, no new site for his family to flourish.

Both Hawthorne’s and Melville’s narratives of the market and the homespace are ultimately rendered incoherent. During much of The House of the Seven Gables Hawthorne seems to reject Cooper by portraying a hope that the market will eradicate both inequality and aristocracy from the American landscape. Yet, Hawthorne cannot escape his anxiety about the fluctuation and volatility of the market economy. At the end of the novel, he seems unable to abandon his characters to the vagaries of the market, so in the final chapters he transfers them to a productive homespace safely protected from commercial activities. In



Pierre, Melville rejects both Cooper's and Hawthorne's attempts to find stability through status and property reconciliation. Through Pierre's futile mission to fulfill the status ideal, Melville demonstrates that status is merely a deceit that obscures legal manipulation and violence. Yet after status and aristocracy are annihilated at the end of his novel, Melville can only imagine "shallow" men like Charlie Millthorpe in the remnants. Even as he portrays Pierre as naively foolish, he certainly provides no viable alternatives for American masculinity. Just as Melville is unable to portray Pierre as a fully realized hero, he is unable to envision a woman as a self-possessed legal agent. Like Pierre, they die without the ideals of status to sustain them.

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<sup>11</sup> It was not uncommon in the nineteenth century for men and women to remarry after years of separation from their first spouse. For more on the commonness of separation and remarriage without divorce, see Hartog.

<sup>2</sup> We might also speculate that the story interested two men who both experienced a sort of trauma by their fathers' frequent travels and early deaths.

<sup>3</sup> It is difficult to gauge Hawthorne's precise level of interest in Agatha's story because his letters to Melville were destroyed after his death. In his recent biography of Melville, Hershel Parker makes a strong case that Hawthorne seriously considered turning Agatha's story into a literary project, but at some point decided the story was best left to Melville. See Parker.

<sup>4</sup> For more on the composition process of "Isle of the Cross," including speculation about why it was never published, see Parker, Herman Melville, 2:130-160.

<sup>5</sup> In his detailed study of Massachusetts and Maryland women's property law in the first half of the nineteenth century, Richard Chused identifies 1850 as a turning point for the success of married women's property reform in the northeast. Prior to 1850, northeastern state legislatures tended to be more conservative than southern or western states regarding married women's property. With the rise of abolitionism and increased concern about economic upheaval, the 1850s marked the high point of the first wave of married women's property reform in the northeast and Massachusetts, in particular. See Chused, "Married Women's Property Law," 1366.

<sup>6</sup> For more on the connections between The House of the Seven Gables and The Pioneers, see Brook Thomas, Cross Examinations of Law and Literature, 71-78.

<sup>7</sup> As the introduction of this project indicates, antebellum married women property reform was often motivated by a concern for how family property could be secured from market fluctuation. Legislators did not begin to address married women's ability to control their earnings until during the Civil War.

<sup>8</sup> For a closer examination of relationship between Hawthorne and Locke's theory of ownership, see Walter Benn Michaels. As Benn Michaels claims, "Hawthorne does not, however, represent the struggle between Pyncheons and Maules merely as a conflict between the more and less powerful or even in any simple way as a conflict over a piece of land. He presents it instead as a conflict between two different modes of economic activity and in this he not only anticipates recent historians' findings but begins the complicated process of

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articulating his own defense of property....Maule embodies a Lockean legitimization of property by labor whereas the Pyncheons, with their pretensions to nobility, are something like old-world aristocrats" (160).

<sup>9</sup> It is unclear whether Judge Pyncheon is actually a judge since the text does not indicate what his compensated work is. Regardless, his appellation signifies a connection between his identity and legal structures. Brook Thomas claims that Pyncheon is modeled after Justice Joseph Story because Story endorsed the powerful elites' control of new forms of wealth, including credit and speculation. According to Thomas, Story found stability amidst fluctuation by privileging the powerful class's entrance into the market over the lower class's. See Thomas, Cross-Examinations of Law and Literature, 68-80. However, it is worth noting that Story also commented on domestic law and asserted vigorously that marriage was "something more than a mere contract...and in this view has some peculiarities of its nature, character, operation, and extent of obligation, different from what belongs to ordinary contracts." As quoted in Grossberg, Governing the Hearth, 21. As legal historian Norma Basch notes, "Story envisioned marital unity as a historical fiction, an elastic base from which new precedents might evolve but which at the same time would prevent radical upheavals." Norma Basch, In the Eyes of the Law, 64. If, as Brook Thomas claims, Nathaniel Hawthorne was familiar enough with Story (who was from Salem) to base Judge Jaffrey Pyncheon on him, then he would also likely have been familiar with the fiction of marital unity, a prominent legal concept often endorsed by Story.

<sup>10</sup> I am not claiming that Hawthorne's romance is more accurate because it is a mimetic transcription of the "real." Rather, in its ability to be fanciful and see beyond appearances, it can be more just than legal institutions can with their dependence on empirical evidence and natural law.

<sup>11</sup> David Anthony closely analyzes Hepzibah's reluctance to handle cash, noting that she wears gloves to protect her white hands from the taint of cash. See David Anthony, "Class, Culture, and the Trouble with White Skin in Hawthorne's The House of the Seven Gables," The Yale Journal of Criticism 12 (Spring 1999): 249-268.

<sup>12</sup> Contemporary reviewers, for example, described Hepzibah as "kind-hearted old Hepzibah," "Old Maid Pyncheon, [who concealed] under her verjuice scowl the unutterable tenderness of a sister," and even "a masterpiece of characterization." They tended to view her as a sympathetic and not entirely pitiful character. As quoted in Nathaniel Hawthorne: The Contemporary Reviews, 163-171.

<sup>13</sup> Hawthorne's ambivalence mirrors legal theorists' attitudes toward the rapid economic changes. As Gregory Alexander asserts in relation to James Kent's Commentaries: "The period between the end of the War of 1812 and the beginning of the Civil War, unquestionably a period of unprecedented growth and change, is often seen as one in which unbounded optimism (save for glitches caused by the Panics of 1837 and 1843) and a blind faith in progress and economic development were universally shared. Kent's treatment of property suggests that this was not the case. Fear and enthusiasm were simultaneously present in his discussions of legal changes such as statutory revision of property law and growth of corporate franchises as a form of entrepreneurial property. Kent's experience was no aberration; a sense of regret and fear as reactions to economic growth and prosperity was widespread throughout American society" (132).

<sup>14</sup> For more on panic fiction, see Mary Templin, "Panic Fiction: Women's Responses to Antebellum Economic Crisis." Legacy 21.1: 1-16. I am expanding Templin's purview beyond fiction written by women in the 1830s, and I argue, instead, that domestic novels consistently focused on the dangers of speculation and that they expressed this concern in the same way as the narratives within Templin's narrower definition: by examining women's relationship to family property. As Chused has demonstrated, the changes in married women's property rights were a direct response to the economic panics of the late 1830s: "When distressed economic times appeared after 1839, the moment was right for legislatures to codify a portion of the equitable separate estate tradition by insulating wives' property from their spouses' creditors. The acts, usually adopted with little lobbying from women, created a special set of assets available for family use when husbands found themselves in trouble with creditors" (Chused 1361). This project situates domestic fiction within the period's legal reforms, illustrating how both were centrally concerned with women's relationship to property and women's status in marriage as a way to provide stability amidst economic fluctuation.

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<sup>15</sup> It is just as likely that Hawthorne would become part of this dialogue, particularly because the vicissitudes of his mother's economic condition dictated his childhood. Much of the decisions about Hawthorne's childhood were made by his uncle, Robert Manning, whom biographers and the Manning family associated strongly with rising commercial order. For more on Hawthorne's relationship with Robert Manning, see Pfister.

<sup>16</sup> My point in this discussion is not to claim that Hawthorne's novel accurately reflects the changes within the antebellum economy. Instead, I seek to emphasize Hawthorne's perception of a threat within the market economy, an economy that he believes is driven by love of cash rather than stable wealth and solidity.

<sup>17</sup> For more on racial coding in *The House of the Seven Gables*, see Paul Gilmore, *The Genuine Article*, 125-150 and David Anthony, "Class, Culture, and the Trouble."

<sup>18</sup> For an overview of critical interpretations on the progression (and blurring) of temporality in *The House of the Seven Gables*, see Lloyd Pratt, "Dialect Writing."

<sup>19</sup> For more on women's role in a productive domestic economy, see Mary Beth Norton, "The Evolution of White Women's Experience in Early America."

<sup>20</sup> For more on Judge Jaffrey Pyncheon's alignment with speculative economies, see T. Walter Herbert, *Dearest Beloved*, 97-98.

<sup>21</sup> This sense of men's immateriality might be traced to Hawthorne's feelings about himself as a writer in the increasingly commercial economy. As Arnold Weinstein claims in his analysis of "Wakefield": "Hawthorne was obsessed with the notion of his own insubstantiality, his ghostliness, his secret identity as nobody." Arnold Weinstein, *Nobody's Home*, 19.

<sup>22</sup> Brook Thomas finds in Holgrave's concerns a striking similarity with Justice Taney's property law decisions: "...Holgrave's opinions on reform have similarities with Taney's decision in the Charles River Bridge case. Just as Holgrave proposes that each generation should be able to restructure society to serve its present interests, so Taney ruled that considerations of public interests at the present time were more important than maintaining the conditions under which a corporation was originally chartered" (69). Throughout the novel, Hawthorne reflects contemporary legal concerns, which frequently dealt with issues of private property.

<sup>23</sup> For more on Massachusetts's married women's property laws, see Warbassee, *The Legal Rights of Married Women*. Phoebe could have retained her stake in the family property if she had inherited the family property in a separate trust, an equity exception to common law practices. However, there is no indication in the text that her inheritance was passed on in this manner.

<sup>24</sup> See David Anthony, "Class, Culture, and the Trouble with White Skin in Hawthorne's *The House of the Seven Gables*."

<sup>25</sup> Based on Alice's position as an object of a sort of gift exchange in order to increase family wealth, Goddu astutely draws a comparison between Hawthorne's novel and Gayle Rubin's essay, "Traffic in Women."

<sup>26</sup> Weinstein prefers the use of the term "sentimentalism" to describe the works she examines. In order to remain consistent in this analysis, I have preserved the term "domestic." As I have argued elsewhere, the term domestic better applies to the genre of novel that this study investigates.

<sup>27</sup> Wyn Kelley also believes that *Pierre* represents a rejection of status and patriarchal relations: "Either to escape from or to protest against the patriarchal institution of marriage, *Pierre* tries to renovate the middle-class household, to achieve a fraternal communion like the one that nurtured Ishmael in *Moby Dick*. In this sense, Melville's novel shares the antipatriarchal spirit of much domestic fiction by women writers of the 1850s" (92). I argue that if *Pierre* tries to create a new household, it is not a middle class or a fraternal space; rather it is an attempt to update and transform the patriarchal context of Saddle Meadows into the urban landscape of New York City.

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<sup>28</sup> The Dutch manors to which Melville refers are an allusion to the tenant uprisings in New York, in which Melville's mother's ancestors, the Van Rensselaers, were "most centrally involved" (Otter 70). These conflicts also gesture toward the divide between status and contract throughout the country. As Brook Thomas observes, "In contrast to the South's slave economy based on totalized social relations, the North had a wage economy based on a legal contract between employer and employee" (146). Thus, early in the novel, Melville indicates the deceitfulness of contract.

<sup>29</sup> For more on how the law used similar theoretical structures to justify status in marriage and in slavery, see the introduction of Timothy D. Morris, Southern Slavery.

<sup>30</sup> While many critics claim that Pierre's sense of duty to Isabel resembles chivalry, that word's feudal connotations make Pierre seem ahistorical and overtly Romantic. But Melville is careful to underscore the particularly American qualities of Pierre and the Glendinning family. Pierre's upbringing has been steeped in nineteenth-century America's formulations of status, and Melville highlights the persistence of status fantasies in nineteenth-century America. These formulations had been refocused around concepts like protection, which were largely seen as consistent or at least co-habitable with American democracy. Isabel, who "has been disinherited from the protection of the legal system," has been left abandoned, therefore, with no protection. In other words, Isabel exists in a status relationship with no one, and it is this void that Pierre is determined to fill (Thomas 145).

<sup>31</sup> Recently, critics have discussed Isabel's probable mixed-race status. See Oshima, "Isabel as a Native American Ghost."

<sup>32</sup> Charlie's "hereditary beauty and youthful bloom...and something of natural refinement as contrasted with the unrelieved rudeness...of his neighbors" caused Pierre to feel sympathy with and tenderness for Charlie (276). Even Pierre's "severely critical" mother, who was "always fastidiously cautious as to the companions of Pierre," approved of his friendship with Charlie (Pierre 276). This mixing of nobility and labor can be seen in Isabel when Pierre first spends time with her. When Pierre first visits Isabel, the two clasp hands: "All his being is now condensed in that one sensation of the clasping hand. He feels it as very small and smooth, but strangely hard. Then he knew that by the lonely labor of her hands, his own father's daughter had earned her living in the same world, where he himself, her own brother, had so idly dwelled" (Pierre 113). Here, Pierre fixates on Isabel's hand and how it marks her as a laborer and how his own hands mark him as an idler. While he feels the fraternal connection with Isabel, he is made aware of their unequal positions and experiences.

CHAPTER THREE

MAKING A NAME: LEGAL FICTIONS AND WOMEN'S  
POPULAR NOVELS OF THE 1850S

In masculine novels of property reconciliation, the plots hinge on women's ability to choose the right husbands in order to quell land disputes: Elizabeth Temple must recognize the nobility of rugged Oliver Effingham, Phoebe Pyncheon must recognize Holgrave Maule's hidden goodness. Similarly, women novelists of the antebellum period also stressed the importance of choosing the right mate, but in doing so, they emphasized women's vulnerability in the status relationship. A foolish marriage, they warned, could destroy a woman's happiness—and, even more frequently, her wealth. Yet these novels were not simply cautionary tales, intended to educate young women on how to choose their husbands wisely. Nor were they an indictment of the women who made poor marriage choices. Instead, they articulated the need for the law to protect women when a husband violated the status arrangement. In this way, these novels presented the law as a new form of paternalism, a safeguard for when male protection proved insufficient, incapable, or inept.

This chapter examines the way wives—people without distinct legal identities—interacted with and interpreted masculine legal writing. It begins by examining a U.S. Supreme Court case, Drury v. Foster, in which the Court decided that a wife could not be held accountable for understanding a legal document. As this case shows, nineteenth-century judges struggled to determine the extent to which the law could intrude on marital unity, in

which a husband was supposed to be able to rule and protect his wife as he sees fit. The women novelists in this chapter view this struggle as symptomatic of the law's insistence that marital unity will provide women with sufficient legal representation. They argue instead that the law has an obligation to enter the domestic space and protect women when their male relations fail to do so. I begin with E.D.E.N. Southworth's The Lost Heiress (serialized 1853; published 1854), which thoroughly criticizes the law for failing to address women's legal concerns, but in the novel Southworth cannot envision a way for women to "write back" to legal discourse. In contrast, both Caroline Lee Hentz's Ernest Linwood (1856) and Ann Stephens's The Heiress of Greenhurst (serialized 1854; published 1857) incorporate fictionalized women's diaries into the narrative and then configure such personal writing as an alternative, matrilineal inheritance, which can spur legal agency. I end the chapter with E.D.E.N. Southworth's Ishmael; or, From the Depths (serialized 1863-64; published 1876). Written over ten years after The Lost Heiress, Ishmael demonstrates Southworth's belief in the novel as a form that can allow the public—rather than male-dominated courts—to investigate and understand women's experiences.

I chose these novels not only because they so explicitly represent the dangers of women's relationship to contemporary domestic law, but also because their sensational elements have often caused them to be critically dismissed as lacking in political or cultural engagement. E.D.E.N. Southworth, Caroline Lee Hentz, and Ann Stephens are known for writing primarily shallow, sensationalistic novels, and they all unabashedly hoped to produce novels that would be successful in the literary marketplace.<sup>1</sup> Their success was, in short, essential to their family's incomes; Hentz and Southworth in particular could not depend on their husbands for any substantial support by the time they were writing in earnest.<sup>2</sup> Many

critics today dismiss these authors' political and cultural critiques because the novels were produced so rapidly and so explicitly for popular consumption. With one possible exception—Hentz's The Planter's Northern Bride—these authors did not write particularly polemical novels. Because their novels refrain from the overt moralizing of other novels of the period—such as Maria Cummins's The Lamplighter (1850) or Susan Warner's The Wide, Wide World (1854)—they have often been considered separate from the “canon” of antebellum women writers. For example, Nina Baym has argued that because these novels “were set in a clear fantasy world” that their “undomestic women could not serve as models” (Woman's Fiction 181).<sup>3</sup> I argue instead that these texts speak to women's legal standing and use fantastical settings and events to underscore the compelling need women had for additional protection from male relatives.<sup>4</sup>

#### Becoming a Blank Sheet: Women in Nineteenth-Century Legal Discourse

In January 1865, the U.S. Supreme Court issued a decision in Drury v. Foster, a somewhat unusual case in that it did not deal with the thorny legal issues resulting from the Civil War. Instead, the case involved recent married women's property law reforms. Thomas Foster of Minnesota was an eager and ambitious man, who unfortunately lacked capital for his business ideas. In his search to raise capital for his most recent venture, Foster hoped to use his wife's land, which she held in her own name as a separate estate, as collateral for a loan. Mrs. Foster was, as her lawyer later described, “fearful that the speculation her husband was getting into would not come out right” (Drury v. Foster 69 U.S. 24, 31).<sup>5</sup> According to Minnesota state law, Mrs. Foster could not convey her lands to her

husband until she underwent a privy examination—an interview conducted by a public official outside of the husband’s presence. Such an interview was intended to ensure that husband did not coerce his wife into surrendering her property rights.<sup>6</sup> In keeping with the law, Thomas Foster hired a notary public to draw up a mortgage, perform the privy examination, witness Mrs. Foster’s signature to the document, and then adhere the official seal that would confirm her voluntary compliance. Though the privy examination might seem like a straightforward protectionist measure, it often could create difficulty in practice, as the Foster case demonstrates. Mrs. Foster later claimed—and the notary public confirmed—that she had expressed to the official some reservations about her husband’s business dealings. In addition, when signing the document, she was under the impression that her husband wanted to raise several hundred dollars—rather than the \$12,785 for which she was actually pledging. As the notary public admitted, Mr. Foster had instructed him to leave blank the amount of the mortgage and the name of the lender, Gardner P. Drury. Therefore, Mrs. Foster signed a legal document not knowing its true stipulations, which were deliberately obscured by the men who were supposed to be protecting her interests.

Foster’s business venture did eventually fail, and the couple defaulted on their loan. Shortly thereafter, Drury attempted to foreclose on Mrs. Foster’s property. She refused to surrender her land, and Drury sued Mr. Foster. The Fosters claimed that Mrs. Foster’s mortgage was not valid because her privy examination was faulty. The notary public ignored her concerns about the business deals, and he presented her with a document that lacked the key terms of the agreement. She did not, they claimed, willingly consent to the mortgage, and it was therefore unenforceable. The Minnesota state courts ruled in favor of the Fosters,



but Drury, perhaps believing that the creditor-friendly U.S. Supreme Court would be more sympathetic to his plea, appealed to the highest court in the nation.<sup>7</sup>

On December 23, 1864, notable Washington, D.C. attorney J.M. Carlisle presented Mrs. Foster's situation to the U.S. Supreme Court justices in a sympathetic light, focusing almost exclusively on the need for the law to protect women involved in commercial transactions. He argued that the privy examination "is the protection with which the law hedges the gentle nature of a woman—her crowning grace and glory—from the dangers, and perhaps the ruin, which, without the law's protection, it is certain in many cases to bring upon her" (*Drury v Foster*, 69 U.S. 24). Carlisle emphasizes women's unique nature, but more specifically, he underscores the need for the law to protect women from commercial or speculative transactions that could "ruin" them. The issue is not just that women are different; it is not even that women fail to understand business dealings. Instead, Carlisle argues that a wife is naturally vulnerable to her husband. She cannot resist him even when she knows he is wrong. As Carlisle claims: "[This] case is an affecting illustration of the extent to which a woman becomes, in marriage, 'subdued to the very quality of her lord.' Her woman's fears had foreseen what her husband's intelligence never suspected; but like a woman, lovely and confiding, she yielded everything to him" (*Drury v. Foster* 24, 31). Here, Carlisle asserts that Mrs. Foster could see, almost intuitively, that her husband's venture was likely to fail; in fact, she knew it better than he did. Of course, Carlisle needed to demonstrate Mrs. Foster's misgivings in order to support his claim that she had expressed doubts to the notary public. Still, his statements reveal the complex set of beliefs that constructed women's social and legal position in the mid-nineteenth century. It is not that women are incapable of understanding business. Rather, men are naturally attracted to

speculation, and it is not in women's power or inclination to defy their husbands. Carlisle claims, however, that the truly guilty party was not Mr. Foster, but the notary public, whom he called "the great offender in the case" (Drury v. Foster 24, 31). In other words, Mrs. Foster's predicament represented a double failure of protection: first, her husband failed to protect her and then the law neglected its obligations to her.

The plaintiff's representation, led by Robert Peckham, argued that the blanks had been left in the mortgage so that Drury and Foster could freely negotiate the terms of the loan. The lawyers insisted that Mrs. Foster's status as a feme covert was irrelevant because she was separately examined, as required by the law. As Peckham argued

"What an ordinary person may do without examination, a feme covert may do when separately examined. If an ordinary person, without examination, may execute a deed with blanks, a feme covert may execute a similar deed, provided she be separately examined, know fully what she does, and it be plain that it was such a deed she wished and meant to execute." (Drury v. Foster 24, 28)

According to the plaintiff, because the separate or privy examination ensures that a wife has not been coerced, the law must see her as "an ordinary person."

Although the 1865 Supreme Court typically ruled in favor of facilitating commerce, the defense tapped into widespread concern over women's vulnerability to male speculation. As Stacy Lorraine Brauckman and Michael A. Ross claim in their analysis of cases involving privy examination laws, "jurists found themselves in an uncomfortable position, as they had to choose between traditional 'protections' of women, on the one hand, and the needs of the business community on the other" (59). Even after most states in the U.S. had passed some form of married women's property laws, many judges, lawyers, and legislators continued to worry about husbands' attempts to acquire their wives' property for speculation or other unstable commercial activities.<sup>8</sup> The continued use of privy examinations "reflect[ed] the

view that when wives entered the world of business and commerce they still needed special care and protection” (Braukman and Ross 61). Women were still associated with stable value property, such as real estate, and their involvement in market transactions often generated anxiety. As the persistence of privity examination statutes made clear, even decades after women’s separate property rights were established, many Americans believed that husbands had the ability to ruin women by exposing them to the vagaries of the marketplace; therefore, the law needed to serve as an additional shield for these vulnerable women.

The Court unanimously ruled in favor of the Fosters. Justice Nelson’s opinion begins by citing Minnesota’s privity examination statute, which he claims “exist[s]...by common law for [the wife’s] protection, in consideration of her dependent condition, and to guard her against undue influence and restraint” (Drury v. Foster 24, 33). Nelson invokes language of dependence, highlighting the status construction of marriage, and he configures recent common law reforms as serving as “protection” and a “guard” for the weaker party. In other words, when a husband violates the status arrangement of marriage and uses undue influence against his wife, it becomes the law’s responsibility to protect her when her natural protector does not. Justice Nelson’s opinion then focuses on the nature of the document Mrs. Foster signed. He claims that it could not be considered a mortgage, but was rather a “blank piece of paper” (Drury v. Foster 24, 33). For Nelson, Mr. Foster’s suspicious practices carry dangerous implications:

If the mortgage Mrs. Foster signed were held valid, Nelson worried, then unscrupulous husbands across the land would ask notaries to create blank documents for unsuspecting wives to sign. Nelson envisioned countless married women so commercially naïve and deferential that they would sign anything—even a blank sheet—and leave every detail to their husbands. (Braukman and Moss 68)

Justice Nelson's opinion ends with the recognition that the Court's ruling places an increased burden on lenders and creditors, who likely continue to suffer some monetary losses because of actions like Mr. Foster's. Yet, Nelson claims, such losses are not nearly as damaging to society as the sacrifice of "the rights of a class who are dependent enough in the business affairs of life, even when all the privileges with which the law surrounds them are left unimpaired" (Drury v. Foster 24, 35).

The Drury v. Foster case highlights the legal realm's difficulty in determining the law's reach into the domestic space: if a wife has no true legal identity, how and when can the courts determine that her husband is not protecting her properly? As we have seen, married women's additional property rights did not change the legal view that marriage was a status relationship—a hierarchical arrangement between a more powerful agent and dependent subject who were bound together by mutual affection. This status relationship depended on the legal fiction of marital unity, which bestowed a distinct kind of privacy onto the domestic sphere, as legal scholar Hendrik Hartog explains:

"Unity" identified a private household, a bounded sphere, within which husband and wife would work out their collective life and their relationship.... This private sphere was private both in the sense that it was not, ordinarily, subject to public regulation and in the sense that it was private property. It "belonged" to the husband. And for a wife, being married meant being subject to a husband within his private domain. (108)

Marital unity, therefore, substantiated marital privacy, and jurists and lawyers were wary about intruding into that space. However, when the status ideal was not upheld, the courts were often left to grapple with the proper legal response. Such difficulties often emerged in cases involving property disputes and lending activities, as the Drury case indicates.<sup>9</sup>

The rhetoric of Carlisle's argument as well as Justice Nelson's opinion in the Drury case embody the new role envisioned for the common law in the U.S. by the 1860s—the

protector of dependent women. Certainly, the notion that women needed protection was nothing new; however, the belief that the courts could intrude upon the private sphere and adjudicate family matters gained credence in the antebellum era. Beginning in the 1840s, as Michael Grossberg claims, authority shifted from the male head of the household to the male jurist, making “judges a new kind of patriarch” (121). This transfer of power was supposed to stop the abuses of errant men. However, “as the powerful image of the patriarchal judge reminds us,” Brook Thomas asserts, “it was a double-edged reform. It did not challenge patriarchal rule; it merely relocated it. In doing so, it inscribed the dominant patriarchal beliefs more deeply into the law” (171). This intrusion into marital privacy was not a rejection of women’s dependence, or of paternalism more generally. Rather the new role for the courts was a recognition that violating the status arrangement had important public consequences, not least of which involved property disputes and commercial dealings.

Clearly, women needed legal oversight in order to decipher and interpret legal writing—a central point in the Drury case. As a woman, Mrs. Foster was judged incapable of understanding the danger that the blanks on her deed represented. In her hands, as Justice Nelson claimed, the document was no mortgage at all; it was no different than a blank sheet of paper. His decision implied that were she a man, she might have been held to a different standard of interpretation. The issue of women’s ability to interpret and respond to legal discourse became a critical focus of women’s literature of the period.

#### A Ghastly, Legal Murder: The Failure of the Law in The Lost Heiress

From the beginning of her novel The Lost Heiress, Southworth focuses on the imperfection of the American justice system. The novel opens on the night before innocent Willy O'Leary will be executed for a murder he did not commit, and his wife and mother are traveling to the state capitol to plead his case with the governor, Daniel Hunter. Hunter, who adheres strictly to the letter of the law, refuses to pardon O'Leary because the evidence does not warrant overturning the jury's decision. According to Daniel Hunter, sympathy cannot compel legal judgment. He responds to Nora and Ellen by explaining: " 'Yes, the time may come when moral suasion will govern the world, but the world must be prepared for it first—a generation from infancy up must be educated in its spirit....At present the law must reign' " (LH 55). As he makes clear, these women are asking him to judge based on moral feelings, not legal evidence. All of the women in the novel, including his wife, plead with him to reconsider, but he steadfastly refuses. Thus, Southworth establishes the mechanics of the law as indifferent to women's moral intuition, and therefore, Daniel Hunter's application of the law is flawed and incomplete. As Ellen laments toward the end of the novel, after Willie's innocence is finally established: " 'We [the women of the novel] always knew Willie's innocence, sir, and we always hoped it would be found out. He was a martyr, sir—his death was a ghastly legal murder' " (LH 269). The law, due to its inability to incorporate sentiment, can sanction murder on its own terms, and its power can ruin women's lives, rather than protect them.

Daniel Hunter's insistence on the merciless and sentiment-blind application of the law sets all of the novel's plot lines in motion. As a result of Willy's wrongful execution, Nora, Willy's mother, is compelled to vengeance and steals the Hunters' baby daughter, bringing the child home to the unsuspecting Ellen to raise with her own two children. Ellen,

Willy's widow, is left to provide for herself and her family, and their poor living condition makes them susceptible to the plague. After the plague strikes the region, Ellen's family is placed in a hospital to die. Daniel and Augusta Hunter volunteer at this very hospital, where they see Ellen's daughter, Honoria, who is unafflicted. Believing Ellen has died from the plague, they decide to adopt Honoria. However, Ellen and the rest of her family do recover, so Augusta Hunter must ask Ellen if she can continue to raise the child and includes the stipulation that Honoria should never learn that Ellen is her real mother. Ellen regrets that the Hunters met her blood daughter, Honoria, rather than her adopted daughter, Maud (who, unbeknownst to any of the characters except Nora O'Leary, is the Hunters' real daughter). Ellen accepts the Hunters' arrangement, though, for the advantages it will give Honoria. After several more intricate plot twists, Ellen dies, and the crazed mother-in-law, Nora, finally reveals that she had stolen Maud Hunter. Some time after the reunion between the Hunters and their natural daughter, Maud, Daniel and Augusta Hunter die on the same day. Daniel Hunter's will leaves all of his property to his wife, Augusta, but since she died intestate, all of their land goes to their natural daughter, rather than Honoria.

Throughout the novel's very involved plot, Southworth remains focused on the law's effects on family life and women's experiences, in particular. Southworth's novel shows a skepticism about adoption, a developing legal practice, and asserts that a person's nature cannot be changed by a legal process. When the Hunters adopt Honoria, Augusta Hunter emphasizes the complete legality of the arrangement. As she tells Ellen O'Leary:

“[Daniel Hunter] will legally—understand me—legally adopt her, give her his name, and every advantage of his wealth, station, and social connection.... You perceive, Ellen, that his wish is to draw the child as closely as possible to ourselves—to make her as exclusively our own as if she had been born ours. And I think he would be glad if he could deceive himself and every one else into the notion that she is ours.” (LH 209)

Southworth, however, asserts that legal decrees cannot successfully deceive anyone; Honoria, of working-class heritage, was not born to be a Hunter. While living with the Hunters, she enjoys a life of luxury, which quickly becomes dissipation. She demeans her blood mother, Ellen (though she does not know Ellen's real relation to her), and is generally a disgrace to the family. In other words, her "legal" adoption utterly fails to transform her into a Hunter. Instead, she experiences the worst of both class conditions. She is vain and snobbish as a result of the influences of high society and also, Southworth implies, because of her inferior blood.

Maud, raised in the American countryside but carrying aristocratic blood, represents the best possibilities for the adoption process. Because of her upbringing and her ignorance of her true identity, she has no concept of inherited privilege. Maud's birth mother, Augusta Hunter, was an orphan from an aristocratic European family and had to learn to shun her title upon coming to America. Maud does not have to undergo such painful, humbling experiences. Instead, her exposure to American rural life grounds her nobility. She feels fortunate when she discovers her parentage, and she continues to live the life of a humble, hard-working woman even after she again resides with the Hunters. Most importantly, she continues to love the hotheaded, lowly born, and staunchly democratic Falconer O'Leary, her adoptive brother and future husband. Her marriage to Falconer, Southworth reveals, lifts the long curse that has hung over Howlet Hall and its residents. Maud's mixed-class experience, similar to Phoebe Pyncheon's, enables her to bring about a rebirth of America's "natural aristocracy."<sup>10</sup>

Maud's aristocratic background helps provide stability within the troubled economic conditions that surround the novel's plot, and her marriage serves as a model for a proper



status-based relationship. The night before their marriage, Maud presents Falconer with a deed to all of her inherited possessions. As we might expect, her separate estate consists entirely of property and real estate rather than cash or investments. During the scene, Southworth describes the legal documentation in careful detail: “It was a deed of conveyance of Howlet Hall, and the whole of her landed estate, to Falconer O’Leary—regularly and legally drawn up, signed, witnessed, and sealed” (LH 499). Maud arranges to express her womanly sentiments through masculine legal writing. Southworth’s description underscores Maud’s need for a legal intermediary. On its own, Maude’s writing has little power until it is translated into official legal language. Within Falconer’s and Maud’s subsequent conversations of the marriage gift, Southworth reveals her vision of the ideal status relationship. Initially, Falconer objects to Maud’s gift.

“And you—the richest heiress in the state—have thus conveyed to me the whole of your property, and left yourself penniless!”

“What of that? Are not our interests one?” she whispered, shyly—fondly.

“Yes! Blessed be Heaven! They are one; but being one—why did you not keep the estate in your own right; it would have been the same thing, since our interests are inseparable? Answer, love! Why?”

“Oh!” said Maud, hiding her blushing face in his bosom, and speaking in the soft low tones of shy devotion, “you do not know a woman’s fond doting heart. She does so delight to depend upon her husband; to owe all things to his love; to receive everything from his hand! That is the way with her; God has made her so!”

This was a new revelation to Falconer.... “Blessed be God for woman!” he ejaculated. Then disengaging himself from her shy embrace, he tore the deed in fragments and threw it on the floor....

“It was the idea of my taking this patrimony away from you, that kindled my scorn! Dear love! Sweet Maud! It was beautiful—it was lovely in you to offer it, but it would have been loathly in me to take it!” (LH 499-500)

Falconer rejects Maud's gift on the grounds of marital unity, claiming that their "interests are inseparable." Maud explains her intention by appealing to nature: God has made women in such a way that they delight in their dependence. This exchange embodies the hope of many domestic novels: that women are willing to offer up their possessions, and the best men will protect them without requiring absolute control over them. Maud had hoped to express her unity with Falconer's interests through authorized, legal writing. But as Falconer points out, such documents are unnecessary when love is strong and true. Thus, the law remains unable to fully take into account the heart and intuition. Falconer, whose father was killed because Maud's father insisted on adhering to the letter of the law, understands the law's weaknesses better than anyone.<sup>11</sup> He destroys the deed and permits affection to structure their relationship instead. Southworth's novel ends not with the plan for reform, but instead a removal from legal concerns. Over her literary career, Southworth will maintain her interest in the law's affect on domestic life, and in later novels, such as Ishmael, she will project her own view of legal reform.

#### The Covering of One's Name: Legal Writing and Women in Ernest Linwood

While Southworth fails to envision any role for women's writing within the legal realm in The Lost Heiress, Caroline Lee Hentz's Ernest Linwood asserts that women's personal writing can contain truths that the law cannot encompass. Throughout Ernest Linwood, Hentz presents literary ability as almost the exclusive domain of women, handed down from one generation to the next as a matrilineal inheritance. Mary Kelley notes this theme in many domestic novels of the mid-nineteenth century, but as she claims, Ernest

Linwood “stands almost as a parable of the literary domestics’ attempts to know themselves by looking to those who went before” (37). As Hentz’s novel shows, literary production provides women with a sense of lineage and belonging at a time when the law had prohibited married women the control of their own property.

The novel opens with a scene that sets the stage for Hentz’s exploration of the function of women’s writing. Gabriella’s schoolteacher has just harshly criticized Gabriella’s poetry, and she reacts by telling her mother, “ ‘I will never write any more,’ ” but her mother urges her to continue (EL 18). As Mary Kelley’s quote suggests, though, Rosalie supplies Gabriella with her poetic nature as a kind of alternative, property-less form of inheritance. Rosalie tells her daughter, “ ‘I was called the little bookworm, the prodigy, the dream-girl, a name you have inherited, my darling Gabriella....’ ” (EL 167). Yet, unlike Gabriella, Rosalie never wrote or recited for the public. Instead, her most notable piece of writing is a private manuscript, which she leaves for Gabriella and which Gabriella herself calls “ a hallowed legacy to the orphan, who had no other inheritance” (EL 143).

Here, Hentz highlights the importance of women’s private writing to providing a sense of identity and belonging for a young woman. In reading her mother’s diary, Gabriella learns the identity of her father, Henry St. James. During her life, Rosalie had refused to tell Gabriella anything about him. The manuscript also details the truth about Rosalie’s abandonment. She describes St. James’s departure on an extended business trip, and during that time, a strange Frenchwoman visits Rosalie and claims that she, too, is married to Henry St. James. Believing her husband a bigamist, Rosalie leaves with Gabriella in secret and in disgrace. She moved to a new town, resumed use of her maiden name, and also gave that name to Gabriella. Rosalie’s manuscript ends by pleading with Gabriella to forgive her

father. Gabriella directly transcribes her mother's manuscript into her own story. Until that transcription, the true story behind Rosalie's abandonment and Gabriella's lineage had been hidden. Thus, as an author, Gabriella strives to legitimize Rosalie by making her innocence public. In this way, Gabriella's own text marks a transition for women's writing—from her mother's privately circulating text to her own public narrative directed to anonymous readers. Hentz's layered presentation of women's writing—a diary contained within an autobiography that is itself a novel—creates a genealogy of women's writing, the end point of which is the domestic novel.

Throughout the novel, Hentz asserts that while women's writing corrects society's unjust conclusions, male writing obscures and hides the past. After Gabriella reads the manuscript, she returns to Mrs. Linwood, who served as Rosalie's confidant of sorts, and asks in doubt: “ ‘Will a mother's virtue cancel the record of a father's guilt?’ ” (EL 200). The answer to this question can be found in the structure of coverture. As Mrs. Linwood reminds Gabriella throughout the novel: “ ‘If there is anything in this world to be prized next to a blameless conscience, it is an unspotted name. Well is it for you, that your own is covered with one, which from generation to generation has been pure and honorable’ ” (EL 335). In particular, the dynamics of coverture effectively erase Gabriella's troubled past. When they marry, Ernest assures Gabriella that she does not need to worry about her father's identity because the Linwood name will “lift up” and even “absorb” and “annihilate” her own name, thereby relieving her of the damage of “bad blood” (EL 202).<sup>12</sup> Thus, men's identities literally write over women's, changing women's names and covering their troubled histories. Marrying Ernest allows Gabriella to take on the Linwood name, which promises to purify

her. It also distances her from her mother, and Gabriella struggles to balance her gratitude toward the Linwoods with the desire to maintain a connection with her mother's story.

Thus, the only time Gabriella violates the dictates of coverture is when she attempts to help her father, whom her mother asked her to forgive. At one of their secret meetings, Gabriella's supposed father—in fact, her father's evil twin—begs for her financial help, claiming he has no one else to depend on but her. He begs her to sell some of her jewels for cash that he can use. In asking for her help, he mocks the structure of coverture and Gabriella's powerlessness by inquiring: “ ‘Girl! Have you no power over the wealth that must be rusting in your coffers? Are you not trusted with the key to your household treasures?’ ” (EL 277). Gabriella's absconding with her jewels from her husband's home was a violation of the laws of coverture because her personal property technically belonged to her husband. Gabriella disrupts the laws of coverture when she “steals” personal property from her husband in order to give it to the man she believes is her father. Gabriella feels justified in this act, claiming that if her husband were not so enraged by jealousy, she could have discussed the predicament with him. Instead, because his protection has failed her, she must act on her own and defy the laws of coverture, if only briefly.

As when Gabriella must hide her actions from her husband, Hentz continually investigates moments in which the status relationship does not operate according to its ideals, and interpretation becomes necessary for judgment. Just as Hentz distinguishes men's and women's writing, she also sees important differences in reading and interpretive practices. The confusion over Henry St. James's possible bigamy is ultimately due to Gabriella's and Richard's mothers reading the Frenchwoman's marriage certificate inaccurately. Because the two brothers have similar names, the women wrongfully believe that they are married to

the same man. Yet women seem uniquely capable of reading beyond legally inscribed identities. When Gabriella comes face to face with her real father—rather than his evil twin—she reveals to the reader: “He was my father, the beloved of my angelic mother, and he had never wronged her, never....Without a word of explanation I believed this, for it was written as if in sunbeams on his noble brow” (EL 430). And, in fact, she was always physically repulsed by her “fake father” and never felt affection for him. Women’s ability to read beyond the legal realm becomes especially critical in a novel obsessed with the need to prove one’s legitimacy—a novel in which one suitor leaves his beloved for months in order to gather legal documentation to substantiate his lineage.<sup>13</sup> The law’s insistence on written documentation creates more problems than it solves, and women’s intuition and personal writing provide an essential function for recognizing and unifying families.

Throughout the course of the novel, Hentz implies that Gabriella, as a woman, appears better situated to withstand poor lineage than a man would be. She understands truth beyond legal institutions and, in addition, she has the benefit of having her name covered by her husband’s. Yet, Gabriella is relieved to discover that her true father is an innocent man:

No one who has not felt as I did, the shame and anguish of believing myself the daughter of a convicted criminal, can understand the intense, the almost worshipping reverence with which I regarded my late-found parent. To feel pride instead of humiliation, and love instead of abhorrence, ...how sublime and holy the gratitude! (EL 456)

Her grateful response leaves the reader with a troubling question: what about Richard, Gabriella’s lifelong friend, who really is the son of a criminal (Henry St. James’s evil twin brother)? This juxtaposition—the good female character with the good father versus the good male character with the evil father—constitutes Hentz’s most disturbing statement about women’s agency. As Gabriella tells the reader, Richard “knows, though the world does not, that his father fills a convict’s grave, and this remembrance chastens his

pride...[Yet], he is rapidly making himself a name ...in the high places of society. Men of talent take him by the hand and welcome him as a younger brother to their ranks..." (EL 465). Richard can go into "the high places of society" and make his own name, but Gabriella's capacity for action is more limited. Gabriella's narrative can help demonstrate her worthiness, but, ultimately, Hentz believes her heroine better off with a secure lineage. It is for men to overcome the troubles of inheritance. Just as Richard must overcome his father's criminality, Ernest must battle the jealousy that he inherited from his father. Gabriella, however, has less power to overcome her inheritance.<sup>14</sup> She is virtuous like her father, and she is poetical just like her mother. It is unclear if she could actively combat either influence, as the men can and must.

If Gabriella cannot really overcome her inheritance, then how powerful is women's writing? Can it really legitimize those who have been rejected by the law? Gabriella herself is at turns proud of and then frustrated by her role of author, which is made most evident in one of her direct addresses to the reader:

Book!—am I writing a book? No, indeed! This is only a record of my heart's life, pages written at random and carelessly thrown aside....I may myself commit them to flames. I am tempted to do so at this moment. I once thought it a glorious thing to be an author,—to touch the electric wire of sentiment, and know that thousands would thrill at the shock,—to speak, and believe that unborn millions would hear the music of those echoing words,...I once had such visions as these, but they are passed.

To touch the electric wire, and feel the bolt scathing one's own brain,—to speak, to hear the dreary echo of one's voice return through the desert waste. Is not such too often the doom of those who have looked to fame as their heritage, believing genius their dower? Heaven save me from such a destiny. Better the daily task, the measured duty, the chained-down spirit, the girdled heart. (EL 69)

In this passage, Gabriella denigrates the power of women's writing. She is not really writing a book, she says, but instead only a record of her heart. In other words, she claims to be

writing a text similar to her mother's. She mocks her long-held belief that her writing will affect anonymous readers, and realizes now that her voice merely echoes back at her.

Gabriella's misgivings supplement many critics' view that Ernest Linwood is an autobiographical novel, mirroring Hentz's own experience with her jealous husband. Perhaps Gabriella's frustration is a feeling that Hentz herself shared; this could explain why she subtitled the novel "The Inner Life of the Author."<sup>15</sup> However, I find this unlikely, especially considering that Hentz had just recently published her most affecting and effective novel—The Planter's Northern Bride. There seems little reason to believe that Hentz felt that her novels fell on deaf ears.

Instead, I find Gabriella's lament disingenuous. It comes in the first quarter of a lengthy novel and asks for a "chained-down spirit" and "girdled heart" for a woman who acts with emotion—albeit judicious emotion—throughout the rest of the novel. This outburst instead represents a moment of depression and futility; it provides a sense of the struggle of writing a text that serves as an alternative to the dominant discourse. Such texts run the risk of never being read or absorbed—of never making a change. Gabriella, as well as Hentz, continues to write her book, and she self-consciously guides her anonymous readers through her life's story, all the while redeeming her mother's legacy. At the end of the novel, she becomes the ultimate author: she produces her own "Rosalie"—a new "text" to revise her mother's fate. Hentz ultimately asserts that women's writing—both professional and personal—can create change, even though she supports women's limited sphere of action. Through Rosalie's diary and Gabriella's book, Rosalie is exonerated. Hentz's own fiction, Ernest Linwood, articulates women's need for legal protection in the event that male protectors take the form of jealous husbands or absent fathers.



### Inheriting Land, Inheriting Gypsy in The Heiress of Greenhurst

Ann Stephens's The Heiress of Greenhurst is another story of a woman's private manuscript that explains the injustices she suffered at the hands of her husband, and which subsequently is passed onto the woman's daughter and then is transformed into a public text. Unlike Southworth or Hentz, Stephens presents a heroine who learns the law in order to reclaim her rightful place. Stephens's novel is unusual because it does not argue for women's increased protection but for women's increased agency—both in the public realm and the literary market.

The Heiress of Greenhurst begins with the story of a gypsy, Aurora, who is betrothed to Chaleco, her tribe's leader. She is then wooed by an Englishman, Lord Clare. Aurora has been disgraced in the eyes of the tribe, and her grandmother, Papita, arranges for she and Lord Clare to elope to England. Papita elicits an oath from Aurora, demanding that Aurora return to her tribe for execution if Lord Clare betrays her. Once in England, Lord Clare establishes Aurora in a separate cottage on his estate, Greenhurst, and they soon have a daughter named Zana. Aurora and Zana live happily together for several years. However, Lord Clare longs for a "civilized" mate and begins to court his former lover. When Aurora discovers this, she returns to Granada to be stoned to death in fulfillment of her oath to her grandmother. Before she dies, Aurora instructs her former gypsy lover, Chaleco, to take her daughter back to England. Papita, Chaleco, and Zana travel to England, where Papita poisons Lord Clare's soon-to-be wife. Zana soon suffers complete amnesia and awakens at the door of Greenhurst, which Lord Clare has deserted out of despair. The servants secret

Zana away to the same cottage where she and her mother had once lived. Eventually, the memoriless Zana meets Chaleco, who tells her of her true past. Soon after, Lord Clare—now dying from despair and remorse—returns to Greenhurst. Zana reveals herself to him but refuses to forgive him, and he dies before he can sign a new will that would give his property to her. Lord Clare's evil sister, Lady Catherine, declares the new will void and arranges to move into Greenhurst with her son, George, who has in time fallen in love with Zana. Property-less and family-less, Zana decides to go back to the gypsies with Chaleco, but on the way, she and Chaleco discover a Bible in which Lord Clare has written Aurora's and Zana's names in the Clare family tree. Therefore, at the end of the novel, Zana inherits her father's property and also marries George, consequently forcing Lady Catherine to recognize her and her mother's legitimacy.

Like Ernest Linwood, The Heiress of Greenhurst opens with a statement of a mother's influence, but Stephens's assertion is more powerful than Hentz's. As the first person narrator, Zana addresses her readers directly and proudly: "It is my mother's story that I am about to write—the story of her wrongs, her sufferings, and the effects of those wrongs....Her history ran like a destiny through my own. My life is but a prolongation of hers. ...." (HG 1). Not just Zana's writing, but her entire life, is bound up in the injustices her mother suffered. Over the course of the novel, the more she learns of her mother's history, the more enraged she becomes and more in touch with her gypsy inheritance. When she discovers that her father has returned to Greenhurst, she tells the reader, "now came other feelings, such as I had never known or dreamed of before. ...Instead of that tender, holy thirst for knowledge that might give my father peace, a fierce curiosity took possession of my soul. I felt not like a child, but an avenger. ..." (HG 294). Clearly, Zana envisions a much

wider sphere of action and redemption for herself than did Gabriella in Ernest Linwood.

While Gabriella hoped to have her father's bad reputation covered over and forgotten, Zana hopes to expose her father's wrongdoing to the world.

Before confronting her father, she reads her mother's private manuscript. Unlike Gabriella, Zana does not transcribe her mother's words directly into her own text; she focuses instead on the actions that her mother's words cause. She describes the physical text as "blackened with the written misery of my mother" and Zana takes up each page "one by one, reverently, and holding my breath" (HG 319). At the end of the manuscript, Zana finds "a stern command," written by her great-grandmother Papita, "to avenge my mother's death [and] return to my own tribe for ever. The words were strong with bitter hate, that seemed to burn into the paper on which they were written" (HG 321). Prior to reading the manuscript, Zana was uneasy about her gypsy blood, but her mother's tale of suffering reconciles her to her heritage. After reading it, she puts her great-grandmother's fiery red earrings in her ears, and she leaves for her father's house, dressed as a gypsy. She brings her mother's diary with her to prove her patrimony to Lord Clare, and she insists on reading directly from the book to him. As she had expected, the words weaken the already failing man. When Zana finally explains to him how her mother died, the words kill him instantly. With some regret and some pride, she has avenged her mother's death, not through action, but through words.

As in The Lost Heiress and Ernest Linwood, The Heiress of Greenhurst divides women's writing from the institutionalized male writing of the legal system. When Lord Clare agrees to elope with Aurora, he explains to Papita: "'Aurora will never be received as my wife—have no claim on my property... and in all things her position must depend on my will, my sense of honor' " (HG 106). However, Papita sees little validity in the law anyway,

claiming: “ ‘...nothing but death, can separate you from this child. You have sworn it before my god.... Your laws—all the laws of this nation of yours are but shadows against the stern will of a woman whom nature has made strong, and treason has left desperate’ ” (HG 107). This distinction is not between “primitive” gypsies and the “civilized” English legal culture. Papita insists that neither country’s laws could trump the will of a woman. The law here is a separate space; sympathy and feeling have their own systems of justice. Papita, as well as the novel, separate the legal world from another realm of honor, emotion, and women.

As in the other novels discussed in this chapter, The Heiress of Greenhurst associates male writing with legal power and presents women’s writing as a site for truth and redemption. Chaleco, who is obsessed with getting revenge for Aurora’s mistreatment, has become convinced that Zana’s claim to the Clare estate is essential. When he attempts to persuade Zana to make her claim on the Greenhurst estate, he instructs her to use her womanly emotions against Lord Clare: “ ‘You know surely how to work on the repentance of a dying man. Go to him, Zana; this estate and others are his—no claim, no drawback—nothing that the English call an entail on it. One dash of his hand, and it is yours’ ” (HG 235). Chaleco clearly understands the connection between male writing and legitimacy; as he claims, one dash of Lord Clare’s hand could change everything. Women’s writing—particularly Aurora’s journal—seems unable to affect change. However, Zana’s own writing, which is in fact The Heiress of Greenhurst itself, redeems her mother’s reputation and legitimizes her own claim to the Clare estate.

Zana combines the power of both male and female writing. While she uses her own authorial power to rehabilitate her mother’s honor, she also educates herself about property

law in order to bring to bear the power of legal writing to legitimize her. Through this process, the once naïve Zana becomes intimately familiar with inheritance law and the connection between writing and possession. Eventually, she finds written, legal evidence of her lineage in a family Bible, which represents quite literally “the word.” At that point, codification, as well as life writing, gives her power. When she finally confronts her evil aunt, Lady Catherine, she warns, “ ‘evidence of Lord Clare’s residence with my mother, which constitutes a legal marriage, is in our possession; the best counsel consider me... the inheritor of his estates. Indeed, the record of my birth, in his own handwriting,... is by the laws proof of a marriage in itself’ ” (HG 407).

Zana seems an anomaly for the mid-nineteenth century because she inherits and controls her father’s land while retaining a firm sense of her connection to her mother, including her mother’s gypsy heritage. In the most radical interpretation of the novel, Zana represents a matriarchal overtaking of paternal spaces. Though The Heiress of Greenhurst might occasionally seem to idealize matriarchal inheritance—Zana’s life is merely a prolongation of her mother’s—the novel ultimately reinforces the power of the law, which is represented as more reliable than male relatives and even God’s goodness. Zana’s marriage to George in the conclusion of the novel reconciles property disputes and supports the status-based construction of marriage (even though the exact ownership of the property remains unclear). In redressing women’s wrongs, then, Zana—like other female characters we have examined—creates stability at an ancestral home space on an ancestral estate.

Baym may be right that the fantastical story of Zana—a gypsy child living on an ancestral estate in England—may not be a “model” for mid-nineteenth-century American women readers. Yet, the suffering that Zana and her mother experience—and Zana’s use of

writing as a form of redress—were familiar tropes in antebellum American women’s writing. The first-person narratives of both Ernest Linwood and The Heiress of Greenhurst expose the law’s limitations in recognizing proper marriage relationships. As these novels show, the heroines’ mothers were innocent, and they themselves were legitimate. In this way, these novels privilege the act of self-creation. Telling one’s own story makes that story available to a different judge, the judgment of the public reader.

### Ishmael: The Lawyer-Hero of Married Women’s Property Reform

Perhaps the most explicit and impassioned depiction of women’s need for additional legal protection comes in Southworth’s Ishmael: In the Depths. In this novel, Southworth incorporates all of the injustices of the three earlier novels: the law’s indifference to sentiment, the problem of legitimacy, and the dangers of women’s exposure to market relations. By setting her novel several decades before the Civil War, Southworth uses her novel to reimagine the history of married women’s property reform. Ishmael, then, is a truly alternative form of legal fiction. Through the legal career of her central character, Ishmael, she glorifies these new laws, and she expresses renewed confidence that the law can properly serve as an additional protector for women.

Like Ernest Linwood and The Heiress of Greenhurst, Ishmael follows a character of uncertain parenthood. Unlike these novels—and unlike Southworth’s other novels—this central character is a man. His working class mother, Nora Worth, had entered into a secret marriage with the local wealthy landowner, Herman Brudenell. At the time, Nora’s sister, Hannah, and the area minister were the only two who knew of the marriage. Just as

Brudenell was planning to tell his mother of the marriage, a woman named Countess Hurstmonceux arrived at the Brudenell estate. It is soon revealed that she too had entered into a private marriage with Brudenell. Their marriage had been kept a secret because the Countess's father did not want her to marry an untitled American. Soon after their wedding ceremony, though, Brudenell discovered that he could never love Countess Hurstmonceux, and he left her in England, vowing never to return. Later, he read a newspaper account (which ultimately turned out to be untrue) of her death in a railway accident, and therefore assumed he was free to marry Nora, the woman who would become Ishmael's mother. When Nora discovers Brudenell's previous marriage, she is devastated, and she dies soon after giving birth to Ishmael. Before her death, she insists that her sister Hannah never reveal Brudenell's identity as Ishmael's father. Brudenell escapes to Europe, and Hannah struggles in poverty to raise Ishmael. Although Hannah attempts to shield Ishmael from scandalous rumors, a schoolmate eventually calls him a bastard, and Ishmael, long uneasy about the true story of his parents, demands that his aunt tell him everything. Hannah does so but without revealing his father's identity. Ishmael is haunted by the idea that he is the son of a bigamist—and that he is generally believed to be a bastard. Like Zana, Ishmael vows to avenge his mother's mistreatment. He does so by becoming a lawyer and consistently defending women whose husbands have abandoned them and left them destitute.

Perhaps the most curious aspect of Southworth's novel is that Herman Brudenell enters not one but two private marriages. Southworth's obsession with this practice seems to relate to her critique of the law: that just because something is sanctioned by legal authority does not mean that it is right and proper. In order to soothe Hannah's worries about her sister's private marriage, Brudenell assures Hannah that it will be completely legal: “ ‘she

shall have the marriage certificate in her own keeping, and every legal protection and defense; so that even if I should die suddenly...she would be able to claim and establish her rights and position in the world' ” (Ishmael 39). After the ceremony is performed and the documentation signed, Brudenell whispers to Nora that she is in fact safe. Yet Southworth's narrative voice interrupts to ask: “But--were either of them really safe or happy?” (Ishmael 41). These private marriages follow the letter of the law, but they violate the spirit of marriage. While Brudenell assures Nora that she is protected because they are legally married, she is not really protected, as she soon discovers. Brudenell has violated her trust and deceived her. The apparent legality of their marriage disappears upon the arrival of Countess Hurstmonceaux.

After Ishmael is born, Hannah is adamant about taking Brudenell to court, believing that in that forum her sister will be vindicated and Brudenell properly punished. She vows: “‘if there is law in the land, you shall be dragged to jail like a thief and exposed in court to answer for your bigamy; and all the world shall hear that you are a felon and that she was an honest woman who thought herself your wife when she gave you her love!’” (Ishmael 103). However, Nora forces Hannah to promise not to reveal Brudenell's identity as Ishmael's father. Though Hannah eventually acquiesces to Nora's wishes, she is soon visited by the minister who performed the marriage ceremony for Brudenell and Nora. He claims that once he heard of Brudenell's first marriage to Countess Hurstmonceaux, he “searched the laws of the land bearing upon the subject of marriage” (Ishmael 116). He advises Hannah that she should “ ‘proceed against Herman Brudenell for bigamy, call me for a witness, establish the fact of Nora's marriage, rescue her memory and...let the consequences fall where they should fall, upon the head of the man!’ ” (Ishmael 117). Even if Hannah did not abide by her



promise to Nora and took Herman Brudenell to court, the law would not allow Ishmael to inherit from his father, according to the minister; rather, going to court would only allow Ishmael to inherit the one thing his mother has to deed him—an “unspotted” name (Ishmael 117).

Recognizing the law’s failure to provide justice for Nora and her son, Hannah’s fiancé, Reuben, begs Hannah to tell him the name of Ishmael’s father so that he might kill the guilty man. Reuben views himself as Nora’s “ ‘nearest male relation’ ” and as such, believes it is his duty to avenge her death (Ishmael 126). He tells Hannah that “ ‘I feel it to be my solemn duty to Nora, to womankind, and to the world, to seek out the wretch as wronged her and kill him where I find him, just as I would a rattlesnake as had bit my child’ ” (Ishmael 126). Horrified at the prospect, Hannah insists that this would be considered murder and that the courts would have Reuben hanged. Reuben, who believes the legal fictions of his time, counters: “ ‘But they’d not hang me, Hannah!....[I]f a man is right to kill another in defense of his own life, he is doubly right to do so in defense of a woman’s honor. And judges and juries know it, too, and feel it, as has often been proved’ ” (Ishmael 126). Reuben believes in a legal system informed by instinctual knowing and feeling—the kind of justice that Southworth demonstrates does not exist in The Lost Heiress. In Ishmael as well, justice is incapable of incorporating “right feeling.” After all, Nora does not want Brudenell’s name revealed because she believes in her heart that he would never have knowingly deceived her, even though she has no proof to support her feelings. She also understands that the courts would not view the case with her eyes and that Brudenell would be punished, even if he were not truly at fault.

However, by not revealing Nora's story to the public, the specter of illegitimacy hangs over Ishmael's life for the entire novel. After a jealous schoolmate calls him a bastard at a school banquet, Ishmael demands that his Aunt Hannah finally tell him the story of his parents. He tells her that he had always assumed that he shared his mother's last name because his father was a cousin or some other distant relation of hers. Ishmael responds to the story of his mother's illegitimate marriage much the same way Zana reacted to her mother's diary in The Heiress of Greenhurst: he swears to seek vengeance against his father. That night, he sits at Nora's grave site and proclaims: " 'Oh, mother! Oh, poor, young, wronged, and broken-hearted mother! Sleep in peace; for your son lives to vindicate you. Yes, if he has been spared, it was for this purpose—to honor, to vindicate, to avenge you!' " (Ishmael 280).

Ishmael avenges his mother's death not through violent action but by becoming a powerful and persuasive lawyer, who defends women who have been manipulated by their husbands. He receives his first case from his mentor, Judge Merlin. A friend of Merlin's, Mr. Walsh, has recently returned to the city in order to reconcile with his wife and recommence his relationship with his children. In response, Walsh's wife has hidden their children, and now the man wants to file a writ of habeas corpus against his wife to force her to produce them. As Merlin advises Ishmael:

"[Walsh] will sue for the possession of the children, and his wife will contest the suit; she will contest in vain, of course, for the law always gives the father possession of the children, unless he is morally, mentally, or physically incapable of taking care of them—which is not the case with Walsh; he is sound in mind, body, and reputation; there is nothing to be said against him in either respect.... You cannot do better than to take this brief. It is the very neatest little case that ever a lawyer had; all the plain law on your side...." (Ishmael 440)

Ishmael, however, claims that he does not like “to appear against a woman” and claims that it is “cruel” to deprive a woman of her children (Ishmael 440). Judge Merlin responds by claiming that it would be for the mother’s “good to be reunited to her husband” (Ishmael 442). From Ishmael’s perspective, Merlin’s view represents all that is wrong with the strict application of the mid-nineteenth century legal fiction that supported marital unity. As Ishmael asserts, “ ‘Her own heart, taught by her own instincts and experiences, is the best judge of [whether or not it is best to reconcile]’ ” (Ishmael 443). Through the character of Ishmael, Southworth faults the law for not being able to take into account the importance of feeling and intuition; he understands that when the status relationship of marriage is not practiced correctly, the wife should not always be punished. Calling Ishmael “Quixotic,” the Judge warns: “ ‘In this case the law is on the father’s side, and you should be on the law’s’ ” (Ishmael 443).

Although Ishmael tells Merlin he will not take the case, Mr. Walsh nevertheless visits Ishmael, believing that if he only explain his side of the story that Ishmael will clearly understand his rights to his children. After telling the story, though, Ishmael is more convinced than before that Walsh is a deceiver who abandoned his wife and left her to fend for herself and her three children. When Ishmael again asserts that he will not take Walsh’s case, Walsh explodes: “ ‘The woman is my wife! The children are my own children! And I have a lawful right to the possession of them’ ” (Ishmael 447). Here, Southworth clearly intends to criticize the view of marriage that would construe wives and children to be possessions that men own. Her interest in women’s struggles against the legal system is clear in that she devotes several chapters to discussing the Walsh case; in fact, it is the only case she discusses in much detail throughout a text populated by lawyers and judges.

After Walsh's narration of the story, which is not reproduced in the text, Southworth retells it three times, each time emphasizing women's vulnerability to men's economic excesses. Ishmael retells Walsh's story in such a way that he transforms it into a tale of abandonment, indifference, and abuse. After he finishes, he condemns Walsh for " 'call[ing] in the aid of the law to tear [your wife's] children from her arms, and coerce her, through her love for them, to become your slave and victim again' " (Ishmael 448). Ishmael's rhetoric here echoes married women's property advocates, who often equated marriage with slavery.<sup>16</sup> After Ishmael explains to Walsh how he understands the case, the narrator reframes the story yet again:

It was only the same old story—of the young girl of fortune marrying a spendthrift, who dissipated her property...and then left her penniless, to struggle alone with all the ills of poverty to bring up her three little girls. By her own unaided efforts she had fed, clothed, and educated her three children for the nine years. And now he had come back and wanted her to live with him again. But she had not only ceased to love him, but began to dread him, lest he should get into debt and make way with the little personal property she had gathered by years of labor, frugality, self-denial. (Ishmael 453)

In this version of the tale, Southworth highlights its familiarity, making legal cases like Walsh's seem commonplace. Specifically, according to the narrator, the profligate husband's wasting of his wife's entire inheritance through speculation has become all too familiar. This iteration of the story also effectively reconfigures the husband as predator, rather than protector. Without the law, Mrs. Walsh is doomed to a life of fear and misery.

Ishmael, then, becomes the embodiment of the legal protector. After meeting Mr. Walsh, he decides to defend Mrs. Walsh against the writ of habeas corpus. Despite the fact that Mrs. Walsh has no money to pay him, Ishmael readily offers to serve her for free. Thus, perhaps the most effectual retelling of the Walsh story occurs during the court proceedings in

which Ishmael directly addresses the jury. It is worth quoting Ishmael's arguments at length because they indicate Southworth's own points of concern about women's legal standing:

He told the court how, ...when [Mrs. Walsh] had come into her property he had squandered it all by a method that he, the plaintiff, called speculation, but that others called gambling; how he had then left her in poverty and embarrassment and with one child to support; how he remained away two years, during which time her friends had set his wife up in business in a little fancy store. She was prospering when he came back, took up his abode with her, got into debt which he could not pay, and when all her stock and furniture was seized to satisfy his creditors, he took himself off once more, leaving her with two children....when at the end of seven or eight months he came back again she received him again. He stayed with her thirteen months; and suddenly disappeared without bidding her good-by, leaving her within a few weeks of becoming the mother of a third child. A few days after his disappearance another execution was put into the house to satisfy a debt contracted by him, and everything was sold under the hammer. She was reduced to the last degree of poverty...Nine years passed, during which she enjoyed a respite from the persecutions of the plaintiff. In these nine years, by strict attention to business, untiring industry, she not only paid off the debt owed... but she bought a little cottage....(Ishmael 467)

Ishmael's arguments effectively describe Mrs. Walsh's natural antipathy toward the notion of defying her husband. It is only after his repeated desertions that she finally is able to resist his advances. Ishmael's rhetoric resembles Carlisle's arguments in Drury v. Foster and arguments found in legal treatises and legislative records across the country in the mid-nineteenth century. Women needed protection from abusive husbands because it was not in their natures to act against their spouses, and it was in their spouse's nature to gamble away the family's wealth on speculative business ventures. Ishmael's argument to the jury emphasizes how the husband has violated the marriage agreement and argues that it is the law's responsibility to protect Mrs. Walsh, who is otherwise vulnerable to her husband's tyranny:

But now at the end of nine years comes back the plaintiff. Her husband? No, her enemy! for he comes, not as he pretends, to cherish and protect; but as he ever came before, to lay waste and destroy! How long could it be

supposed that the mother would be able to keep the roof over the heads of her children if the plaintiff were permitted to enter beneath it? If the court did not protect her home against his invasion, he would again bring ruin and desolation within its walls. (Ishmael 467)

When male protection has failed her, Ishmael argues, a wife needs the protection of the law.

Throughout the courtroom scene, Southworth celebrates the married women's property laws and imagines their history through the actions and the rhetorical prowess of her main character. During his closing arguments, Southworth reports, Ishmael:

...uttered thoughts and feelings upon this subject [of women's right to separate property], original and startling at that time, but which have since been quoted, both in the Old and New World, and have had power to modify those cruel laws which at that period made woman, despite her understanding intellect, an idiot, and despite her loving heart a chattel--in the law. (Ishmael 468)

As he is presented here, Ishmael is the representative crusader for married women's property rights. These principles are "original and startling" to his audience, but they are eventually applauded the world over. Southworth even implies that Ishmael's words contributed directly to the reform movement. Here, Southworth romanticizes the move for property law reform and depicts it as eliminating women's inequality under the law.<sup>17</sup>

Because of the dangers of speculation and market volatility, Southworth repeatedly supports the idea that marriage should be a status relationship that protects women from the volatility of fluctuation and speculation. It is only when marriages fail to provide such security that Southworth believes that women need protection from the law. All of the "good" marriages in the novel remove women from wage labor and any interactions with cash. When Hannah finally marries Reuben, he brings her to his home proudly and proclaims:

"Welcome home, Hannah! welcome home, dearest woman! No more hard work now, Hannah! and no more slaving at the everlasting wheel and loom! Nothing to do but your own pretty little house to keep, and your own

tidy servant girl to look after! And no more anxiety about the future, Hannah; for you have me to love you and care for you!” (Ishmael 305)

It is not that Southworth believes that marriage should no longer be considered a status relationship. Throughout the novel, she emphasizes women’s need for protection. Yet she also portrays the very real possibility that they will not receive that protection from the men who are supposed to provide it.

In Ishmael, Southworth depicts women’s position before married women’s property laws, and she recapitulates the rhetoric behind such reform. Southworth rightly privileges the role of protection—rather than liberation or equality—as the impetus behind the laws. Therefore, she embodies the call for reform through the lawyer-as-crusader character of Ishmael. Southworth portrays the decades preceding property rights reform as a time when women lacked proper legal protection. Southworth, like many popular women writers of the mid-nineteenth century, did not challenge the status foundation of marriage. When practiced rightly, marriage could shield women from the marketplace and wage labor. When the status relationship was violated, it endangered women precisely by making them vulnerable to the ill effects of their husbands’ speculation. As Carlisle argued in the Drury case, men were naturally attracted to speculation, and wives were naturally inclined to submit to their husbands’ will. It was the law’s responsibility to protect these women when their husbands failed to.

The Lost Heiress, Ernest Linwood, The Heiress of Greenhurst, and Ishmael all focus on a young character who must prove his or her legitimacy because of the law’s failure. This quest for legitimacy is inextricably tied to a right to a certain kind of stable, unmarketable property—a mother’s diary or an ancestral homespace.<sup>18</sup> These novels focus on the law’s failure to protect a woman when her stable value is threatened and she is forced unfairly to

fend for herself. In this way, they plead the case that the law provides incomplete justice because it does not recognize women's vulnerability in the status relationship. They argue that instead it is the law's obligation to invade the privacy of the homespace in order to protect women whose male relatives fail them. In many ways, these novels expose the cracks in nineteenth-century legal fiction. Although they accept the ideal that a husband and wife should be held together, unified by bonds of mutual affection, they continually revisit marriages in which this is not the case. They demand that the law look beyond the legal fiction and address myriad, "real life" practices.

From the legislatures to the courts, the legal realm grappled with how to respond to violations of marital unity. The proliferation of domestic law cases demonstrates the law's willingness to intrude upon the distinctly private space of marital unity. In other words, the law was willing to recognize that the status ideal could fail white women. For example, judges were willing to overturn legal precedents in order to award custody of a child to the mother, rather than the father. On the other hand, the law was reluctant to interfere with or interrogate the status construction of slavery, and this reluctance perpetuated incalculable racial cruelty, violence, and injustice. Thus, when Southworth bemoans women being viewed as mere "chattel" in the eyes of the law, she ignores the important fact that—whatever the abstract theory undergirding marriage—the courts did not treat white women simply and exclusively as property. In the next chapter, I will explore the connections between the status theories that supported both slavery and family life in the nineteenth century.



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<sup>1</sup> This view probably originates with Nina Baym's assessment of the respective authors in Women's Fiction. It has been repeated throughout the secondary critical work of domesticity and sentimentalism, perhaps because all three women considered themselves professional writers of one sort or another and wrote prodigious amounts explicitly to earn money for their families.

<sup>2</sup> For more on Southworth's relationship with her husband, see Melissa Homestead, American Women Authors and Literary Property, 44-49. For information on Hentz's financial condition, see Mary Kelley, Private Woman, Public Stage, 164-67.

<sup>3</sup> In her recent book Family, Kinship, and Sympathy in Nineteenth-Century American Literature, Cindy Weinstein makes a powerful argument for further consideration of novels by Southern women writers, including Hentz and Southworth. See 5-11.

<sup>4</sup> Other critics, including Laura Korobkin and Dawn Keetley, have recently emphasized the connections between the sensationalist domestic novel and popular nineteenth-century trials, involving scandalous cases including adultery and murder.

<sup>5</sup> Mrs. Foster's first name was not recorded in court records (Braukman and Ross 57).

<sup>6</sup> While such examinations had been required in medieval England, this practice was endorsed in an American context by Tapping Reeve in his treatise The Law of Baron and Femme (1816), the first extended discussion of marriage in American legal history. Instead of seeing marriage as a contract, Reeve believed that it was an alliance between the stronger and weaker sex; therefore, the law should protect wives from the coercive powers of their husbands. As Norma Basch claims, according to Reeve, "Marriage, therefore, was not a contract between equals, but a relationship between the stronger sex and the weaker sex, which the common law in its wisdom recognized" (Basch, "Invisible Women," 138).

<sup>7</sup> As Braukman and Ross argue in their extensive analysis of the Drury case, President Lincoln had recently added five new Republican justices to the court, who were all "committed to economic growth" and had recently ruled in favor of creditors in analogous cases involving "innocent investors" (66).

<sup>8</sup> Fifteen states required privy examinations until near the turn into the twentieth century, and North Carolina, for example, abolished its requirements for separate examination in 1945 (Braukman and Ross 61).

<sup>9</sup> Part of the uncertainty arose from the abolition of equity courts in most states during the early decades of the nineteenth century. Prior to that time, equity courts adjudicated many marital concerns, particularly property concerns of the very wealthy. Because the equity system, inherited from England, was widely viewed as undemocratic and unable to accommodate the changes of the market economy, most state legislators could easily see the need to end the equity system. For more on the abolition of equity courts throughout the U.S. in the early nineteenth century, see Warbasse, Changing Legal Rights.

<sup>10</sup> Interestingly, Ellen O' Leary is given no credit for raising the magnanimous Maud; Southworth seems to write over Ellen's character, transforming this woman who pleaded for her husband's life, worked to support her family, and tended an estate, into a passive, weak, dreamy character who had little affect on her adopted daughter or her son, Falconer.

<sup>11</sup> Despite these beliefs, though, Falconer relinquishes his career as a radical politician and reformer in order to marry Maud.

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<sup>12</sup> Weinstein discusses the pervasiveness of the word “own” throughout Ernest Linwood in Family, Kinship, and Sympathy. She concludes: “It seems clear that Hentz’s concern with what is one’s own has everything to do with losing one’s name, specifically the moment when a woman marries, loses her name, becomes a possession of her husband and metamorphoses, in the words of eighteenth-century legal writer William Blackstone, into a feme couverte” (22).

<sup>13</sup> In order to marry Ernest’s sister, Edith, her primary suitor embarks on a multi-year journey to collect sufficient documentation of his lineage.

<sup>14</sup> For a thorough analysis on the implications of Ernest’s inherited jealousy, see Keetley.

<sup>15</sup> For more on the relationship between Hentz and her husband, as well as the autobiographical implications for Ernest Linwood, see Kelley 222-28.

<sup>16</sup> This practice of women activists of the period elided the difference between one status relationship and another. Though wives were in a status relationship with their husbands, it was not the same kind of legal dependence between masters and slaves. I will explore this problematic appropriation of enslaved women’s experiences by white women activists in the next chapter.

<sup>17</sup> For all of the troubled marriages in the novel and the many court cases focused on marital wrongs, it is notable that Southworth mentions the word “divorce” only once, when she mentions the kinds of scandalous cases that attract the most crowds to the courtroom. Interestingly, divorce does play a more significant role in Ishmael’s sequel, Self-Raised; or, From the Depths (1876). While Ishmael focuses on the married women’s property reforms, Self-Raised focuses on divorce litigation.

<sup>18</sup> This is one crucial way that these novels differ from later nineteenth century novels that express anxiety about women’s relationship to inherited property. In these novels, if a woman inherits any item of value, it is a family homespace and never cash or any other form of fluctuating wealth. When Henry James turns to similar concerns, his female characters must also negotiate the difficulties and problems associated with cash wealth.

CHAPTER FOUR  
“NOT IN THE USUAL WAY”: SPECULATIVE VIOLENCE  
IN AFRICAN AMERICAN NARRATIVES

In 1814, a freed black man named George Stephens appeared before the Pennsylvania Supreme Court to seek a writ of habeas corpus to retrieve his wife. Some years previously, she had escaped from her slave master in Maryland and then eventually married Stephens in Pennsylvania. Her master, however, located her and demanded that she return to Maryland. She was able to negotiate a compromise with him in which she would work for a three-year indenture period in return for her freedom. In Stephens’s writ, he challenged this bargain, asserting that her status as a married woman prevented her from entering into a contract without his consent. The court denied his request, reasoning that her initial position as a slave superceded her position as a wife. In arguing that the agreement was in the woman’s best interest, Chief Justice William Tilghman claimed that “her situation is totally different from that of a free woman” and that the common law’s rules of coverture did not apply to her. Associate Justice Jasper Yates agreed, insisting that, “as a slave she could not enter into a [marriage] contract without her master’s consent” (qtd in Grossman 130).

The question in the case of Commonwealth v Clements, then, was not whether or not Stephens’s wife could enter into a contract. Instead, the issue at hand was which of her status positions—slave or wife—was the one that precluded her from contracting. Stephens evidently believed that, because his wife married him in the North, that her status as property

in the South would be erased. Clements, on the other hand, clearly believed that the woman carried her status as a slave with her into the North and that any relationships she entered into there were null and void. In addition to these complications, the story is even more striking because the woman attempts to contract with her slave master for her freedom—a contract that, if tested in a court of law, would prove even less binding than her marriage.

Cases like Commonwealth v Clements indicate just how deeply America's fascination with status relationships affected the African American community. Legal discourse erased the humanity of the slave and transformed him or her into a piece of chattel property. In addition, as the Stephens case indicates, even if this status relationship could be escaped, the black wife still faced another: the legal fiction of marital unity, which denied her an identity separate from her husband. From another perspective, though, the Stephens's story demonstrates how slavery prevents a woman from assuming her role as a "proper wife" in the way the mid-nineteenth-century Americans would have understood it. Although status robbed people of their subjecthood and self-possession, it could also enable them to inhabit the normative positions in society, such as husband, wife, father, and child.

Despite the innumerable ways that the law affected their everyday lives, African Americans were systematically denied the opportunity to participate in the creation of America's legal fictions. Yet within mid-nineteenth century African American narratives, we can uncover an archive of alternative legal fictions, directly in dialogue with the dominant discourse. This archive of narratives can provide insight into the African American legal imagination. As Robert Cover claims in his essay "Nomos and Narrative": "To live in a legal world requires that one know not only the precepts, but also their connections to possible and plausible states of affairs. It requires that one integrate not only the 'is' and the

‘ought,’ but the ‘is,’ the ‘ought,’ and the ‘what might be.’ Narrative so integrates these domains” (102). In this chapter, I argue that African American texts of the mid-nineteenth century engage with the period’s legal precepts in an attempt to offer a new hope for status relationships after white practice had threatened the ideal. They do so by first disrupting the legal fiction of the white race at the top of the status hierarchy by offering a view of the real condition of the white home space. Second, they envision a black domestic space that allows for the proper practice of status in a mutually beneficial and affective space.

Before examining the texts in detail, we must first examine the legal fictions that they critique, beginning with the most central principle: self-possession. In the early American republic, citizenship was tied directly to land ownership.<sup>1</sup> To participate actively and without bias in the body politic, a man could not be under another man’s sway or duress. Property in land represented a wealth that one could always depend on and that could not be taken away. As Elizabeth Maddock Dillon claims, “...historically, the notion of a political authority located in the independent agency of the citizen is closely linked to property ownership” (21). With the turn into the nineteenth century, property became more fluid and wage labor became more common.<sup>2</sup> Self-possession shifted, therefore, from being grounded in land ownership to being grounded in a core sense of the self. In other words, there was a kernel of the self that could not be alienated away in labor. It is derived primarily from Locke’s famous pronouncement in the Second Treatise that “every man has a Property in his own Person” (305).<sup>3</sup> As Peter Coviello describes it, “...all of the individual’s labor power is alienable in its transformation into a commodity, but the whole of the person is not—a wholly alienated person, a human commodity, is, properly speaking, not a laborer but a slave” (48).

Since only African Americans could be legally enslaved in the U.S., whiteness became that quality that protected the wage laborer from becoming a slave. In other words, whiteness became that inalienable kernel of the self. Consequently, in the early decades of the nineteenth century, a body of legal discourse established whiteness as a form of property that enabled self-possession. The courts articulated this conception of whiteness as a property and protected it like other rights. As legal scholar Cheryl Harris argues, judges drew on racist theories to maintain that whiteness was a part of the physical self: “an unsullied fact of the blood rather than a volatile and violently imposed regime of racial hierarchy.” She goes on to note that, “White identity conferred tangible and economically valuable benefits and was jealously guarded as a valued possession, allowed only to those who met a strict standard of proof.” (Harris 1726). As nineteenth-century legal history demonstrates, “whiteness realizes and concretizes the fiction of an inalienable property in the self” (Coviello 48).<sup>4</sup>

In addition to whiteness, the legal construction of marriage during the mid-nineteenth century also sustained male self-possession. Again, it is important to remember that marriage retained its status foundation for much of the century. In the eyes of the law, husband and wife were one person, and that one person was the husband. Purportedly, a wife did not need equal civil rights because she was protected by her husband’s affection. This lack of a legal identity prevented a wife from entering into contracts and from keeping her own earnings, which regulated her interaction with credit markets and speculation.

The legal fiction that supported the status structure of the marriage relationship was theoretically similar to the legal fiction that supported the other major status relationship that persisted in the nineteenth century: slavery. As we have seen, both relationships were

grounded in the notion that the more powerful should protect and care for the weaker. Yet I am not equating the position of wives with the position of slaves, even if women activists of the period made such problematic claims.<sup>5</sup> Rather, this chapter investigates how nineteenth-century authors, activists, and legal theorists reconciled the tensions of calling for the destruction of one status relationship—slavery—and idealizing another—marriage.<sup>6</sup> As Stanley notes in her extensive study of contract law during the Civil War period, federal legislators refused to alter the theories of status that undergirded the marriage relationship. During the debates surrounding the Civil Rights Act of 1866, these legislators “foreclosed debate on whether liberties granted to former slaves would also afford wives individual rights and thereby transform marriage into an equal contract at law. The legislators’ response to this was an unequivocal: ‘No’ ” (Stanley 199).

Abolitionist discourse offers an invaluable resource for examining this attempt at reconciliation. Abolitionists portrayed the status construction of marriage as fostering male self-possession, and they consistently presented it as a natural right. Throughout their speeches and their essays, they configured the domestic space—and women’s place within it—as part of the reward that black males could expect from emancipation. As Henry Ward Beecher said in a speech in November 1865: “ ‘The slave is a man and he will respond to human influence. Although a black man may never be a Yankee, he will follow hard after. Why should he, an ill-compensated and bewhipt drudge, work willingly?...Give him the prospect of a home, a family that is not marketable, and he will work’ ” (qtd in Stanley 138). Beecher’s argument that a family should not be put on the auction block corresponds with the belief that a wife should not go on the market to work. Instead, her labor belongs to her husband; she does not work for herself. She is, as Beecher claims, “unmarketable.” To

counter the Southern criticism that slavery is more beneficial to the worker than the Northern industrial wage system, William Lloyd Garrison focused on the home space and a man's right to own his wife and children—to have them belong to him and not to someone else: “‘For even the most degraded and dependent free laborer, no power can take away from him his wife and children’ ” (qtd in Stanley 153). This connection can be seen perhaps most clearly, however, in the arguments of former southern slaveholders during Reconstruction. One such planter argued: “Allow me to call your attention to the fact that most of the Freedwomen who have husbands are not at work—never having made any contract at all—Their husbands are at work, while they are as nearly idle as it is possible for them to be...” This planter goes on to say that black freedwomen “play the lady and [demand to] be supported by their husbands like white folks” (*Liberator*). The privilege to be protected at home is a function of whiteness; black married women do not have a right to exist outside of contract. The continual connection between emancipation and the right to a home space prompted historian Amy Dru Stanley to note, that “no axiom had been more important to abolitionism” than the concept of the home space and a husband's exclusive right to his wife's labor. Abolitionists, she argued, “constantly contrasted the morality of free market relations to the evil of the slave system on the grounds that all free, laboring men had a right to an inviolate household” (142).

Abolitionists—men and women—configured the domestic space as a right of emancipation; they claimed, in other words, that part of being a self-posessed man was having a wife and family to protect and, yes, to own. This notion was not simply borrowed from domestic literature. It had been constructed and reified in the era's legal discourse. As historians have noted, Emancipation attempted to destroy one status relationship in America:



that between master and slave. Yet even after Emancipation, the law continued to idealize another status relationship: that between husband and wife.

Like abolitionist discourse, many antebellum African American texts celebrate the destruction of slavery without condemning the status-based model of marriage. These narratives all provide a glimpse into to the white (usually slaveholding) home space, revealing it to be a troubled and violent perversion of the proper status relationship. Yet, interestingly, the condition of white marriage does not necessarily cause the African American writers to conclude that the status relationship is altogether unrealistic or unattainable, even as they critique the status construction of the master-slave relationship. Instead, they hold out the possibility of the practice of a purer status relationship in the black home space. Embracing the notion of the inviolate home space, they configure not just as a source of stability against market relations but also as a site of defense against white racial violence and intrusion. In this chapter, I will place two African American texts—Frank J. Webb’s The Garies and Their Friends (1857) and Harriet Jacobs’s Incidents in the Life of a Slave Girl (1861)—within the context of nineteenth-century marriage law to illustrate the importance of the status ideal for the African American community.

Webb’s and Jacobs’s texts engage deeply with the period’s legal discourse, but they provide unique perspectives on the question of status in the African American community. Most obviously, Jacobs presents the experience of a black woman—one who is “multiply disfranchised”—while Webb portrays what is possibly the first successful black businessman in American literature (Accomando 229). Jacobs’s text famously ends without marriage; Webb’s text details a series of mutually enriching marriages among African Americans. While Webb’s text is self-consciously fictitious, while Jacobs’s narrative insists on its

truthfulness. Jacobs details the difficulties of a fugitive slave, and Webb focuses exclusively on free blacks in the North. These texts are not necessarily representative of two contrasting modes of African American life. Rather, in spite of their differences, their similar focus on black women's position in the home space registers the pervasiveness of the issue in the African American community. Perhaps more interestingly, these texts also demonstrate the complex construction of "freedom" by complicating the notion that the opposite of an enslaved person is a self-possessed, contracting individual.

Stable Property and Stable Women: The Inviolable Home Space  
in The Garies and Their Friends

In 1857, five years after the publication of Uncle Tom's Cabin, Harriet Beecher Stowe wrote a laudatory preface for what is now believed to be the second African American novel, The Garies and Their Friends. Stowe praised the author, Frank J. Webb, for portraying African Americans as "capable of freedom [and] self-government" (Webb xx). Webb, a free African American born in Philadelphia, was married to the African American actress, Mary Webb, whom Stowe had championed. As Stowe's preface to The Garies and Their Friends recognizes, Webb's novel takes up the issue of the black capacity for self-government; in other words, he explores the obstacles against—and the potentiality of—black American citizenship. While Stowe's novel pushes black domesticity out of U.S. borders, Webb depicts a thriving black community, complete with "self-possessed" black men who provide for and protect exactly the kind of ideal domestic spaces that Stowe portrays in Rachel Halliday's kitchen. In The Garies and Their Friends, Webb provides a model for black male self-possession that is grounded in material wealth and is established

through a status-based marriage and a domestic space separate from market relations. By critiquing white notions of property and value, Webb ultimately asserts that African Americans can gain not only citizenship but dominance through a proper understanding of self-possession.<sup>7</sup>

Although many critics have claimed that Webb's interest in the domestic space is a result of his interactions with women writers, this scholarship ignores Webb's engagement with the legal discourse of his time. The novel is filled with references to the law and American citizenship and is obsessed with the condition of property in America. The novel begins at Clarence Garie's plantation in Georgia. The black woman who lives with him as his wife, even though she is in fact his slave, has recently discovered that she is pregnant. Unable to bear the thought of passing the matrilineal curse of slavery onto another child, "Mrs. Garie" pleads with Mr. Garie to move their family North. She worries that if Mr. Garie dies, "Heirs would spring up from somewhere, and we might be sold and separated for ever" (Webb 54). For these reasons, the Garie family soon moves to Philadelphia, where Mr. and Mrs. Garie are finally married. They also join a tightly knit black community, becoming friends with the wealthy landowner, Mr. Walters, as well as the industrious black family, The Ellises. The Garie's neighbor is the racist white lawyer, Mr. George Stevens, who discovers that (unbeknownst to Mr. Garie) he is Garie's long lost cousin and Mr. Garie's only white next of kin—thereby qualifying him to inherit the Garie property. Stevens devises a plan to start a race riot in Philadelphia to accomplish two selfish goals: (1) to devalue the area real estate so that he can buy it and sell it later at a profit and (2) to have Mr. Garie killed so that he can claim his stake in the Garie family property. During the race riot, Mr. Ellis is gruesomely attacked, Mr. Garie is murdered, and Mrs. Garie dies during childbirth.

The riot brings violent devastation to the older generation, and after the destruction, Webb focuses on the younger generation: the Garie children (Emily and Clarence, named for their parents) and the Ellis children (Charlie, Esther, and Caddy). With Mr. Garie dead, his lawyer decides that the young Clarence Garie should pass as a white person and attend a boarding school far away. Because his sister, Emily, is too young to maintain such secrecy, she remains with the Ellis's. After many years of living as a white person, the white society with whom he has integrated discovers his secret and rejects him utterly. This trauma makes him chronically ill, but before he dies, he returns to the black community and his sister Emily. Despite such scenes of violence and death, The Garies and Their Friends is, finally, a tale of black uplift. By its end, Mr. Walters is happily married to Esther Ellis, Charlie Ellis has married Emily Garie, and Caddy Ellis has also married a hard-working man from the black community. The final sentence of the novel describes the senior Mr. and Mrs. Ellis, who "lived to a good old age, surrounded by their children and grandchildren" (Webb 392).

For Webb, women's position within the home is an essential element of creating an inviolate domestic space, which alone can protect the black subject from white racial violence. Webb portrays black men who succeed in the market while their wives are devoted to domestic pursuits and maternal duties: in other words, an ideal status relationship. While in Uncle Tom's Cabin, the domestic space is never intruded upon by racial violence, in Webb's novel, the terror of violence is brought, quite literally, to the doorsteps of the Gaires and their friends. Immediately before the riot, The Ellises retreat to Mr. Walters formidable home, bringing with them a host of decidedly domestic skills. For instance, Caddy Ellis—by far the most fastidious housekeeper in the novel and perhaps all of antebellum fiction—uses her kitchen tools to concoct a mixture of boiling water and pepper, which she then repeatedly

pours on the approaching white mob. She is able to transfer her domestic skills into a line of defense without herself become manly or engaging in combat. During much of the novel, Webb actually critiques Caddy's almost irrational devotion to domestic pursuits—at one point, her cleaning routine almost fatally injures her brother—but in the riot scene he celebrates her method of defense as one of the most effective against the attacking white mob.

In the riot scene, Esther Ellis truly stands out for her ability to defend the home space while retaining her femininity. When she enters Mr. Walters's house, she responds that the sight of the guns collected in preparation for the riot "make me wish I were a man" (Webb 205). She then relates a story about watching a black woman being abused by the white mob and claims: " ' I felt I could have strangled them: had I been a man, I would have attacked them on the spot' " (Webb 206). Implicit in Esther's desire to be a man, though, is a recognition that she is a woman and that she cannot strangle the white attackers. Instead, she embraces her capabilities as a woman, and she pledges to load the guns for the men to make their work of defense more efficient. Before the mob attacks the house, one of the men absent-mindedly lights a fire in the fireplace, and a spark jumps out from the grate toward the stockpile of gunpowder. Esther alone has the presence of mind to stamp out the spark and clear the hearth. As Robert Reid-Pharr points out, her heroic act mirrors the more mundane domestic chore of taking out the ashes. After the dangerous episode, Esther faints almost immediately, further emphasizing her feminine nature. Even though Esther may wish she were a man, she (and her sister) adeptly use womanly skills to help defeat the white attackers. Notably, Webb tells the reader that it is during these preparations for the riot—these

moments in which Esther realizes her potential to defend the home space—that Walters’s love for her develops.

Mr. Walters asks Esther to marry him after the riot, Esther realizes that her first duty is to help establish a new home for her immediate family. Although she feels quite strongly for him, she informs her brother: “ ‘I told him yesterday that I could not think of marrying him now, whilst we are all so unsettled. It grieved me to do it, Charlie, but I felt that it was my duty. Cad and I are going to add our savings to mother’s; that, combined with what we shall receive for father’s tools...will be sufficient to furnish another house’ ” (Webb 286-87). As Esther’s quotation indicates, she cannot create a new house with her husband until she has re-established her family’s domestic space. Similarly, her younger brother Charlie understands that with his father incapacitated, he must take on the role of provider and protector, a role that Webb discusses explicitly. Immediately after learning about his father’s injuries, Charlie reassures the women in his family: “ ‘I’m almost a man now....don’t be afraid, I’ll take care of you all’ ” (Webb 268). Mr. Ellis, Charlie’s father, echoes this need for male strength and protection, when he awakens briefly from his coma to tell his son: “ ‘My boy, you are all your mother and sisters have to depend upon now; I’m—I’m—...I’m helpless; but you must take care of them’ ” (Webb 272). Webb’s novel is deeply committed to depicting the practice of status relationships within the black community in Philadelphia. The women devote their earnings to the maintenance of the household, and the incapacitation of the father necessitates the brother assuming the role of protector.

After depicting proper enactments of the status, Webb then enshrines the ideals through a set of images that Walters displays in his home. Early in the novel, Webb describes a painting that Walters owns, depicting Toussaint L’Overture, the black Haitian

revolutionary leader. Walters admires the portrait because it shows the general in full military dress and resists turning the leader into a racist caricature. “That,” he tells Mr. Garie when they discuss the image, “looks like a man of intelligence. It is entirely different from any likeness I ever saw of him. The portraits generally represent him as a monkey-faced person, with a handkerchief about his head” (Webb 123). After Walters marries Esther, the narrator revisits the domestic space and relates some important changes. “Then opposite to the portrait of Toussaint is suspended another picture....It is a likeness of Mrs. Esther Walters, nee Ellis. The brown baby in the picture is the little girl at her side,—the elder sister of the other brown baby who is doing its best to pull from its mother’s lap the doll’s dress upon which she is sewing” (Webb 333). Webb’s imagery is significant, if not exactly subtle. Balanced by the intelligent, military hero is the black maternal presence, performing domestic duties and serving in the home. Just as in the riot scene, Esther’s domesticity continues to support black male efforts at defending the home space. Esther is enshrined as the ideal African American wife not only because she capably defends the home space, but also because she commits herself to the communitarian identity of the proper wife and mother. Unlike Toussaint, who is depicted in his portrait as an intelligent, self-possessed military leader, Esther is depicted surrounded by her children and engaged in domestic pursuits. Webb’s vision then embodies the complementary roles and responsibilities that legal discourse articulated in its descriptions of the status relationship.

Although women’s position in the status relationship purportedly bolsters male self-possession in the market economy, Webb’s novel expresses considerable anxiety about the implications of wage labor. In relation to the African American community, he criticizes the practice of sending young men into domestic service. Significantly, this kind of service

separates young men from the black domestic space—a key source, as we have seen, for their self-possession. In addition, Webb implies that to have a black boy working in the house is unnatural; it is a remnant of the condition of slavery rather than proper wage labor in which one can retain one's self-possession. For example, when Mrs. Ellis sends young Charlie to work in service for the white widow Mrs. Thomas, the boy balks at the prospect, swearing: “‘I’m not going to be stuck up behind their carriage, dressed like a monkey in a tail coat—I’ll cut off my own head first’ ” (Webb 60). Charlie recognizes that domestic service requires such a negation of the self that he would prefer to destroy himself. In giving advice to the Ellises about the situation, Mr. Walters agrees with young Charlie:

“If you can’t get on without the boy’s earning something, why don’t you do as white women and men do?...they would rather give [their sons] a stock of matches, newspapers, or apples, and start them out to sell them...Where would I or Mr. Ellis have been had we hired out all our lives at so much a month? It begets a feeling of dependence to place a boy in such a situation.” (Webb 64)

The domestic service agreement is not really a contract at all, but a parceling out of one's self for a wage until there is simply no self left. It creates, as Webb makes clear, a dependent relation dangerously similar to slavery. Robert Reid Pharr points out that Webb's “critique stems...from the horror that the loosening of boundaries between the household and the market enacts in the psychologies on display in the text. The servant is kept in a sort of limbo in which he sells not only his labor but also his person” (70). Rather than domestic service, Mr. Walters endorses a return to classical liberal theory in which self-possession is maintained through selling concrete materials for an exact value.

Just as Webb is critical of black domestic service for robbing men of their self-possession, he emphasizes the ways that white's speculative activities and contractual arrangements jeopardize their self-possession beyond recovery. For example, one white



businessman, Mr. Blatchford, rescinds his offer to hire Charlie Ellis because his workmen threaten to quit if forced to work alongside a black man. Blatchford recognizes his decision is unethical, but feels it is necessary: “To accede to his workmen’s demands he must do violence to his own conscience; but he dared not sacrifice his business and bring ruin on himself and his family, even though he was right” (Webb 298). When his business associate, Burrell, subsequently relates this story to his wife, she criticizes Blatchford for not following his conscience. Her husband responds to her critique:

“Not so fast, my little woman....You are unjust to Blatchford; he could not help himself, he was completely in their power....he is under contract to finish a large amount of work within a specified time; and if he should fail to fulfill his agreement it would subject him to immense loss—in fact, it would entirely ruin him....he is greatly in debt from unfortunate speculations, and a false step just now would upset him completely; he could not have done otherwise than he has.” (Webb 301)

Burrell’s statement registers the perils of the purely contractual marketplace. Mr. Blatchford “can not help himself”; he is “completely” in the power of his business contracts. Because he is under the sway of other men, he has no self-possession and is powerless to make ethical decisions for himself, and in turn perpetuates racial discrimination. He is particularly in jeopardy because of his dalliance with speculation, which has left him in debt and therefore in danger of disappearing completely.

Throughout the novel, white characters are associated with the volatile commercial economy of credit, speculation, and unstable value. Mr. Stevens, the villain, plans the race riot as a way to temporarily devalue property in the neighborhood so that he can subsequently buy up the properties at a discount, “restore order,” and then resell the properties at a considerable profit. Webb condemns such speculation, and he directly compares it to gambling. As he describes Mr. Stevens’s business partner:

Mr. Morton speculated in stocks and town-lots in the same spirit that he had formerly betted at the racecourse and cockpit in his dear Palmetto State....To have frequented gaming halls and race courses in the North would have greatly impaired his social position; and as he set high value upon that he was compelled to forego his favourite pursuits, and associate himself with a set of men who conducted a system of gambling operations upon 'Change, of a less questionable but equally exciting character. (Webb 168)

According to Webb, there is no significant difference between betting on horses and betting on the exchange; betting on stocks is simply “less questionable” than outright gambling.

Because of such practices, Webb continually depicts the white home space as pervaded by market relations. In the Stevens's family home—the white domestic space that Webb describes most thoroughly— Mr. Stevens hatches his plan for the race riots, and as Webb points out, Stevens openly discusses his devious plans with his wife. Thus, instead of the home providing a safe space from the dangers of contract and speculation, it is bound up with and poisoned by such arrangements. In fact, Stevens's home is even mortgaged to the wealthy Mr. Walters. Therefore, his house is literally at risk, a disturbing prospect in a novel that so closely associates owning a home with owning oneself. Stevens's house is, quite literally, in constant jeopardy of being taken away from him. In addition, the Stevens home is filled with violence and chaos. Webb even presents a scene in which Mrs. Stevens whips her daughter, Lizzie. In a complete rejection of the affective motherly discipline that Richard Brodhead finds in sentimental literature, Mrs. Stevens resorts to violence—and, quite interestingly, the same violence that the slave master uses to discipline his black slaves.<sup>8</sup>

The Garies and Their Friends resembles other domestic novels in its deep anxieties about credit and speculation. Because of the fluctuating value of these new forms of wealth, the fear was that the value of the self could also fluctuate and be destroyed. (As Hawthorne warns in The House of the Seven Gables, the credit economy means “that someone is always

at the drowning point.”) Thus, The Garies and Their Friends, like other novels of the period, emphasizes the stable value home space, secured by a wife who does not enter into market relations. Yet, unlike other domestic novels, Webb’s fear of speculation is uniquely racialized. While the white characters in Webb’s novel embrace the ephemeral forms of wealth that were beginning to dominate the antebellum economy, the black characters retain their faith in stable value and material goods. Thus George Stevens is described as a real estate speculator, who buys and sells property using credit, while Mr. Walters uses prodigious reserves of cash to buy property and—critically—he never sells. Walters therefore maintains his foothold in stable forms of wealth, and of course, his self-possession is further secured by his wife, Esther. Throughout his novel, whiteness is inextricably linked to the volatile commercial market, and he implies that there is no going back. White America has abandoned stable forms of wealth in favor of limitless speculation, and consequently whiteness is perpetually associated with the danger of disembodiment and disappearance. In Webb’s novel—in an amazing reversal of legal theory—it is blackness that represents an inalienable and stable property, and whiteness becomes a lack of property.

As a result, The Garies and Their Friends warns against the enervating consequences of interracial mingling, as seen most clearly in the story of Clarence Garie. After his parents’ death, it is decided that Clarence will go to a boarding school and pass as a white person. Clarence enjoys his white privilege and soon shuns the black community. He falls in love with and plans to marry a rich and beautiful white woman. Yet the cost of keeping such a secret is literally destroying him. As he tells his only white confidant: “ ‘I must shut this secret in my bosom, where it gnaws, gnaws, gnaws, until it has almost eaten my heart away....It has kept me awake night after night, it haunts me at all hours; it is breaking down

my health and strength—wearing my very life out of me’ ” (Webb 325). His white blood forces him to repress his true self, and the process slowly destroys him. When Clarence’s secret is exposed, he is ruined. Rejected by his betrothed and disgraced in white society, he discovers that he cannot reconnect with the black community because he remains hyper-aware of the presence of his white blood. In contrast, his sister Emily has happily rejected any claim to whiteness and, as Charlie Ellis’s wife, embodies the ideal of the domestic woman. At the close of the novel, when Clarence’s death is inevitable, he finally returns to Philadelphia to be with his sister. When Charlie picks up Clarence from the steamer, he immediately recognizes how the illness has transformed Clarence, but reassures: “Ah, wait until we get you home, we shall soon have you better.” After the remark, Clarence responds, in the spirit of George Harris: “ ‘Home!...home! How delightful that word sounds! I feel it is going home to go to you and Em’ ” (Webb 382-83). Unlike George Harris, though, Clarence’s home is viable, sustainable, and located within a vibrant black community, located firmly in the domestic.

By presenting a thorough critique of white misunderstandings of property, The Garies and Their Friends recuperates classical self-possession as a possibility only for the black community because it alone can maintain a domestic space separate from contract relations. The black enclave will be able to defend itself against white racial violence, while in the interim, white America risks its self-hood on forms of wealth that do not, in fact, exist. By exposing white America’s fascination with contract and speculation, Webb countered the prevailing legal fiction of whiteness as property with his own legal fiction: The Garies and Their Friends.

## The Status of Protection:

### Harriet Jacobs's Search for a Sustainable Domestic Space

As in The Garies and Their Friends, Harriet Jacobs's Incidents in the Life of a Slave Girl (1861) reveals white marriage to be a corruption of the status ideal, and it too suggests that an inviolate household can protect African Americans against white racial violence. Jacobs's narrative argues that black families can embody the principles of the status relationship. First, she demonstrates white Southern culture's failure to uphold the ideals of status and then emphasizes the importance of the status model for black families. Jacobs is aware that the inviolate home space is composed of a husband who works for wages and a wife who remains at home and labors solely out of love for the family. As the planter's comments suggests earlier in this chapter, white women's privilege of being removed from the marketplace and commodification was persistently denied to black women. As Claudia Tate notes, "Black women were public commodities of exchange whose market value was exclusively indexed as the production of material wealth, whereas white women were private individuals" (25). By placing Jacobs's narrative within the context of legal depictions of marriage, we can understand that it is not simply a narrative following the transformation of an enslaved woman into a liberated, contracting agent. Jacobs is also arguing for African Americans' right to enact and inhabit a status-based construction of familial relations. Throughout Incidents in the Life of a Slave Girl, Jacobs repeatedly states that her goal is to provide a safe domestic space for her children, and Jacobs is deeply critical of slavery and the legal fictions that support it, which systematically deny any privileged status to black Americans.

Like Webb, Jacobs contrasts the depravity of the white family with the strength of the African American family. Through her comparison, Jacobs undercuts the legal fiction that structured Southern antebellum society. Through her portrayal of the corrupt Southern white family, Jacobs attacks a primary legal fiction of the culture: that black families—and black marriage, in particular—are not real. In 1858, the North Carolina Supreme Court ruled on the case of Howard v. Howard, the South’s last decision on slave marriages. In the judgment, the justices distinguished slave relationships from white marriages by invoking the differences between contractual and status understandings of marriage. To distinguish slave couplings from white marriage, judges configured black couplings as purely contractual and negotiable, whereas, as we have seen, marriage retained its status element for much of the nineteenth century. As North Carolina Chief Justice Pearson argued:

[T]he relation between slaves is essentially different from that of man and wife joined in wedlock. The latter is indissoluble during the life of the parties, and its violation is a high crime; but with slaves it may be dissolved at the pleasure of either party, or by a master of one or both, depending on the caprice or necessity of the owners. So the union is formed, and no ground can be conceived of, upon which the fact of emancipating can, not only drawn of it the unqualified relations, but by a sort of magic, convert it into a relation of so different a nature. (qtd in Grossberg 131)

As Pearson indicates, a white marriage is entered into for life and cannot be dissolved, while a slave marriage is easily terminated for “pleasure,” “caprice,” or “necessity.” Despite the fact that slaves could not enter into contracts, this description of slave relationships resembles nineteenth-century jurists’ warnings about the dangers of a contractual model of marriage. For example, a Maryland Court of Appeals decried the immoral nature of such so-called marriages: “These loose and irregular contracts, as a general thing, derive no support from morals or religion, but are most generally founded in a wanton and licentious cohabitation” (Denison v Denison, 35 Md 361). Rather than critiquing the status-based understanding of

marriage, Jacobs, like Webb, asserted that blacks had the ability—and should have the rights—to occupy this construction of marriage.

Scenes throughout her narrative indicate that Jacobs was aware of legal discourse's depiction of slave marriage. When referring to the precarious nature of her Aunt Nancy's marriage to a free black man, Jacobs carefully points out that their marriage was "a mere form, without any legal value" because Nancy's "master or mistress could annul it any day they pleased" (Jacobs 143). Dr. Flint also articulates the contractual view of slave relationships when he discusses Linda's marriage prospects with her young lover: " 'If you must have a husband, you may take up with one of my slaves,' " to which Jacobs responds: " 'Don't you suppose, sir, that a slave can have some preference about marrying? Do you suppose that all men are alike to her?' " (Jacobs 39). The definition of slaves as property, not people, was clearly a central legal fiction to the slaveholding states, but Jacobs also highlights the legal fiction that structured slave relationships.<sup>9</sup> Just as the law recognized that slaves were in fact human beings, but rejected their personhood in legal proceedings, judges recognized that slaves formed relationships, but rejected that those relationships could be marriages. The law insisted that slaves could not inhabit the status model of the family; instead slaves could only ever understand and act within a temporary, contractual model of relationships.

In the nineteenth century, status relationships were based on the notion of protection. As opposed to contractual relationships, status relationships were understood as a group of interconnected people in which the stronger members would care for the weaker, while the weaker would labor for the stronger. Jacobs insists, though, that this ideal of a caring and protective space did not exist and that her portrayal is more accurate than the legal fictions: "I

draw no imaginary pictures of Southern homes” (Jacobs 35). As Jacobs argues repeatedly in Incidents in the Life of a Slave Girl, the Southern household represents the degradation of the status model. Jacobs uses the principles of status to critique Southern slaveholding society. Her portrayals of domestic life in South depict a fallen ideal in which husband and wife are divided from one another and unable to fulfill their familial responsibilities. Hazel Carby notes that Jacobs’s descriptions of Mrs. Flint “utilize the conventions of an antebellum ideal of womanhood while exposing them as contradictory....The qualities of delicacy of constitution and heightened sensitivity...appear as a corrupt and superficial veneer that covers an underlying strength and power in cruelty and brutality” (53-54). In one of several passages, Jacobs portrays the unhappy condition of the Southern husband and wife: “Angry words frequently passed between her and her husband...in her angry moods, no terms were too vile for her to bestow upon me. Yet I, whom she detested so bitterly, had far more pity for her than he had, whose duty it was to make her life happy” (Jacobs 32). Here, Jacobs emphasizes the absence of sympathy and affection in the Southern home. Rather than a proper practice of status, the way that she depicts relationships in the Southern home status is confused and inverted: the husband does not care for his wife, and the slave bestows pity on the mistress.

The legal concept of “status” structured both the family and the plantation in the South, so Jacobs’s depiction of failed status in the household also implicated the master-slave relationship. She shows that just as the white husband does not protect his wife from disgrace, the slave master does not protect or care for slaves and that, just as the white wife is too lazy to work for her family, she does not care for her slaves. For example, when she is first confronted with Dr. Flint’s sexual aggression, she asks her reader:



But where could I turn for protection? No matter whether the slave girl be as black as ebony or as fair as her mistress. In either case, there is no shadow of law to protect her from insult, from violence, or even from death; all these are inflicted by fiends who bear the shape of men. The mistress, who ought to protect the helpless victim, has no other feelings towards her but those of jealousy and rage. (Jacobs 27-28)

Rather than rejecting the premise that the black woman requires protection, she repeatedly insists that neither the law nor the master provide such protection.<sup>10</sup> In fact, she argues that it is precisely the law and the slave master who endanger black women.

The absence of protection within the slave system causes Jacobs to turn to other white men in order to fend off Flint's sexual advances. As Jacobs is all too aware, slavery has deprived her of the opportunity for and privilege of a truly protective marriage. Early in Incidents in the Life of a Slave Girl, she is romantically involved with a free black carpenter. As Jacobs describes the situation, "We became mutually attached, and he proposed to marry me. I loved him with all the ardor of a young girl's first love. But when I reflected that I was a slave, and that the laws gave no sanction to the marriage of such, my heart sank within me" (Jacobs 37). The injustice of Southern law as well as the continued advances of Dr. Flint forced Jacobs to renounce her first love. As she realizes,

Even if [her lover] could have obtained permission to marry me while I was a slave, the marriage would give him no power to protect me from my master....And then, if we had children, I knew they must, "follow the condition of the mother." What a terrible blight that would be on the heart of a free, intelligent father! For his sake, I felt that I ought not to link his fate with my own unhappy destiny. (Jacobs 42)

Jacobs brilliantly appeals to her readers' assumptions about what marriage should be in order to critique the slaveholding society. A free black husband would be unable to protect her from her master's advances. In addition, her children would inherit the condition of slavery from her, and her husband would then be unable to protect them as well. Because of the accumulation of legal fictions that would deny her family's existence, Jacobs gives up her

lover for his benefit. She implies that he would be unable to consider himself a real husband because he would be robbed of the ability to protect his wife and family.

Because the law denies Jacobs a marriage that can provide protection, she chooses to become involved with a powerful white man, Mr. Sands. When Jacobs admits to her readers that she entered into an extramarital relationship with Sands, she justifies her decision for those who would judge her according to white standards of behavior. As she famously tells her readers:

With all these thoughts revolving in my mind, and seeing no other way of escaping the doom I so much dreaded, I made a headlong plunge. Pity me, and pardon me, O virtuous reader! You never knew what it is to be a slave; to be entirely unprotected by law or custom; to have the laws reduce you to the condition of a chattel, entirely subject to the will of another....I know I did wrong. No one can feel it more sensibly than I do. The painful and humiliating memory will haunt me to my dying day. Still, in looking back, calmly, on the events of my life, I feel that the slave woman ought not to be judged by the same standard as others. (Jacobs 55-6, my emphasis)

Here again, Jacobs distinguishes her position from that of white women based on her lack of protection. As Christina Accomando indicates, “According to Jacobs, the ‘virtue’ of slave women is different from that of free Northern women not because of nature or essence but because of legal status. White women have the protection of the law, while laws—and the men who make them—conspire against slave women” (238). Without proper protection under the law, in other words, Jacobs is forced to create her own, which causes her to violate conventional codes of conduct. Yet, as Jacobs points out, her relationship with Sands represents an exercise of consent—the kind of consent white women practice when they make their marriage decisions. As she writes, “It seems less degrading to give one’s self, than to submit to compulsion” (Jacobs 55). Here, Jacobs exercises self-possession over her sexual identity—a powerful and empowering experience considering the predominance of rape between master and female slave. This exercise of agency, therefore, occurs within the

context of the need for protection. Jacobs seeks protection in her narrative, and because she cannot attain it in the way that white women can, she is left “struggling alone in the powerful grasp of the demon Slavery” (Jacobs 54). Jacobs asks her readers to admire her agency while simultaneously condemning the slave system that forced her to resort to such tactics.

Throughout Incidents in the Life of a Slave Girl, Jacobs continues these appeals to her imagined audience, Northern white women, and she persistently focuses these rhetorical moments around the concept of protection. In what is perhaps the most famous appeal, in the chapter “A Perilous Passage in the Slave Girl’s Life,” Jacobs asks her readers not to condemn her for her sexual actions:

But O, ye happy women, whose purity has been sheltered from childhood, who have been free to choose the objects of your affection, whose homes are protected by law, do not judge the poor desolate slave girl too severely! If slavery had been abolished, I, also, could have married the man of my choice; I could have had a home shielded by the laws; and I should have been spared the painful task of confessing what I am now about to relate; but all my prospects had been blighted by slavery. (Jacobs 54, my emphasis)

Within this passage, Jacobs twice reminds her readers that their homes are protected by law, which, drawing on legal discourse, she understands as emanating from the husband.<sup>11</sup> White women’s homes are protected under the full privileges and rights given to white men. While white women are shielded through their connection to their husbands, Jacobs must work for herself to create a safe space. Throughout the narrative, she remains acutely aware of white women’s position—protected and secured from the dangers of commodification and American greed.

Like Webb, then, Jacobs locates protection within the inviolate home space and women’s secure place within it. For her, as for many abolitionists, the difference between being a slave and being free rests in the ability to create just such a domestic space. Jacobs

most forcefully articulates this in describing her trip to England when she compares the condition of poor laborers there with slaves in the Southern United States—a comparison often used by slavery apologists to highlight the purportedly beneficent aspects of the slave system. Jacobs vehemently disagrees with the apologists' position. While she acknowledges the English workers' difficult labor, she also notes that their physical work is preferable to that of Southern slaves. However, her most sustained comparison between British laborers and American slaves emerges in her discussion of their homes.

But when I visited them in their little thatched cottages, I felt that the condition of even the meanest and most ignorant among them was vastly superior to the conditions of the most favored slaves in America....Their homes were very humble; but they were protected by law. No insolent patrols could come, in the dead of night, and flog them at their pleasure. The father, when he closed his cottage door, felt safe with his family around him. No master or overseer could come and take from him his wife, or his daughter....The relations of husband and wife, parent and child, were too sacred for the richest noble in the land to violate with impunity. (Jacobs 184)

Jacobs makes clear that the English poor are in a better position than American slaves because the English homes are protected by law. Echoing the rhetoric of abolitionists like Garrison and Beecher, she focuses on the father who can be certain that his home and family belong to him. In Jacobs's view, the English laborer's home is an inviolate domestic space, populated by family members who love and care for each other. This is protection as it should be, as opposed to the supposed "protection" provided by the paternalistic slave system.

After the publication of Incidents in the Life of a Slave Girl, Jacobs continues to focus on the domestic space—and women's place within it—as a key distinction between free and enslaved peoples. In her work with the Freedmen's Bureau in Virginia, she visited freed blacks' homes and noted their condition:

When we went round visiting the homes of these people, we found much to commend them for. Many of them showed marks of industry, neatness, and natural refinement. In others, chaos reigned supreme. There was nothing about them to indicate the presence of a wifely wife, or a motherly mother. They bore abundant marks of the half-barbarous, miserable condition of slavery, from which the inmates had lately come. (National Anti-Slavery Standard)

Just as Stowe contrasted Rachel Halliday's orderly abolitionist kitchen with Dinah's chaotic slave kitchen, Jacobs asserts that one can tell a truly free black family by the "presence of a wifely wife, or a motherly mother." If the problem with Dinah's kitchen in Uncle Tom's Cabin is that the market is omnipresent and all-powerful, it follows that black women, like Jacobs, might want a home space free of the stain of the market. Women's removal from the marketplace is seen as a key reward of emancipation. As Amy Dru Stanley claims: "Northerners pledged that in exchange for hard work freedpeople would earn the right to maintain the traditional dependency relations of the household. They affirmed that wage labor would support wives' unpaid domestic work—unlike in slave families, but like in idealized white families" (Stanley 140). Jacobs, like other activists, argued for African Americans' right to a status-based model of the family—one in which women could work only in their own home space.

Slavery's legacy was in many ways a lingering concern about should be sold on the market for a price. As wage labor became more prominent, a corresponding fear of alienated labor developed. A persistent concern became the question of how much labor could one sell without selling away oneself. This conundrum was particularly troubling when related to women, whose primary responsibilities were as wives and mothers who cared for the domestic space. The ideal woman's removal from the marketplace—in other words, the wife created by the legal discourse of the period—provided a comforting sense that everything was not ultimately for sale. In Incidents in the Life of a Slave Girl, Jacobs is forced to work

for a wage, and she takes the issue of alienated labor quite seriously. Like Webb, she presents domestic service as an extreme form of alienated labor, which is dangerously akin to slavery. While Webb focuses on men's experience in domestic service, Jacobs emphasizes its damaging affects on women. Throughout Incidents in the Life of a Slave Girl, Jacobs details the slave woman's pain of working to nurture someone else's children while hers are left to fend for themselves. In addition, she points out that domestic service has afforded her little opportunity to hone her writing skills or record her life story: "Since I have been at the North, it has been necessary for me to work diligently for my own support, and the education of my children. This has not left me much leisure to make up for the loss of early opportunities to improve myself; and it has compelled me to write these pages at irregular intervals, whenever I could snatch an hour from household duties" (Jacobs 1). Notably—and as Jacobs makes clear—these "household duties" are not dedicated to her own home, but rather the white home in which she works. Jacobs's narrative ends much the way it begins: with her persistent attempts to secure a home for her children. In the concluding chapter, Jacobs claims that being a domestic servant is a "vast improvement" over slavery, but she confides to her readers: "The dream of my life is not yet realized. I do not sit with my children in a home of my own. I still long for a hearthstone of my own, however humble....But God so orders circumstances as to keep me with my friend Mrs. Bruce. Love, duty, gratitude, also bind me to her side" (Jacobs 201). Part of what "binds" Linda Brent to Mrs. Bruce is that Mrs. Bruce has paid for Jacobs's freedom. As Jacobs makes clear, Mrs. Bruce's payment represents a debt that "such a great obligation could not be easily cancelled" (199).<sup>12</sup> Even in her freedom, then, Jacobs is indebted and bound to a white household. Though she prefers domestic service to slavery (and crucially recognizes the

difference between the two conditions), she is disappointed at the elusiveness of the ideal of the inviolate home space.

The significance that Jacobs attaches to the domestic space may well come from her grandmother—Aunt Marthy in Incidents in the Life of a Slave Girl (also known as Molly Horniblow). Aunt Marthy struggles to create her own inviolate domestic space, which serves as a kind of fortress of familial love against the commodifying evils of slavery. In particular, Jacobs focuses on Aunt Marthy's power as a home owner. As Jacobs explains, from childhood, she and her brother had admired their grandmother's house: "We reasoned that it was much more the will of God that we should be situated as she was. We longed for a home like hers" (Jacobs 17). Throughout her narrative, Jacobs strives to create just such a home and finds it even more difficult than she might have imagined.

Molly Horniblow's house itself eventually became a symbol of the difficulties facing African American property ownership. When Horniblow prepared her will in 1842, her granddaughter Harriet had just escaped North, and her son Mark Ramsey was still enslaved. Because slaves could not inherit, Horniblow had no family members to whom she could deed her house, and so she appealed to the North Carolina state legislature to free her son so that he could legally inherit her property. Her case was denied, and she appointed two prominent Edenton businessmen—Josiah Collins III and Dr. William Warren—to act as the legal executors and legatees of her estate. While Collins and Warren both apparently refused any proceeds from Horniblow's estate, their heirs went to court in order to control the estate following the economic devastation of the Civil War. As Yellin reports in her biography of Jacobs, "...[I]n February 1867 the heirs were awarded Grandmother's property, and Warren successfully sued to eject Uncle Mark's widow Ann Ramsey from [Horniblow's] home"

(255). Although Jacobs repeatedly depicts the importance for freed slaves to own their own domestic space, her own family's property is not secured, even after slavery has ended.

Like the women writers discussed in the previous chapter, Jacobs depicts an alternative, extra-legal mode of inheritance that creates a sense of family affiliation and belonging outside of the traditional systems of male property transmission. Thus, Jacobs dismantles the legal fiction that slaves cannot own property by repeatedly presenting the fact that they do indeed control property, which they too pass across generations. The value of inherited objects is echoed when Jacobs confesses her sexual sin to proud Aunt Marthy, who is initially so shocked and offended that she disowns Linda, and in a symbolic act, she strips Linda of her material connections to the family: "She tore from my fingers my mother's wedding ring and her silver thimble. 'Go away!' she exclaimed, 'and never come to my house, again' " (Jacobs 56-57). Like antebellum women writers, Jacobs emphasizes the passing down of family heirlooms as a way to subvert or deny the period's legal fictions.

In addition, Jacobs's portrayal of this alternative inheritance economy demonstrates the multiple ways that whites take property directly from black slaves. For example, before she was freed, Aunt Marthy had been dutifully saving money from her sales of baked goods in order to eventually purchase her children's and grandchildren's freedom. As Jacobs explains, "She had laid up three hundred dollars, which her mistress one day begged as a loan, promising to pay her soon. The reader probably knows that no promise or writing given to a slave is legally binding; for, according to Southern laws, a slave, being property, can hold no property" (Jacobs 3). Here, Jacobs shows how whites manipulated legal fictions. Aunt Marthy's mistress argues for a contractual arrangement in which a certain amount of money is borrowed and then repaid. Yet under the law, Aunt Marthy cannot enter into



contracts; she provides the money not because she expects it will be repaid, but because under the status arrangement of master and slave, she must. Aunt Marthy's loan ultimately pays for an expensive silver candelabra that is handed down through the Flint family for generations, and Aunt Marthy never receives any of her money: "When her mistress died, her son-in-law, Dr. Flint, was appointed executor. When grandmother applied to him for payment, he said the estate was insolvent, and the law prohibited payment. It did not, however, prohibit him from retaining the silver candelabra, which had been purchased with that money. I presume they will be handed down in the family, from generation to generation" (Jacobs 11).

Jacobs, like Webb, provides a thorough examination of the dangerous foundation of white property and the corrupt legal fictions that support white America. Her narrative is a realization of agency, but it is also a quest for protection—a search for a stable, inviolate home space where she is safe with her children. Unlike Webb's fictional account, Jacobs's narrative reveals the difficulty of attaining such an elusive ideal, particularly due to the legacy of antebellum legal fictions that had prevented the formation of sustainable black families. Throughout Incidents in the Life of a Slave Girl, Jacobs reminds the reader of how difficult it is to do this by herself. Even at the close of the narrative, she underscores the absence of a husband and reiterates a desire to form a home space without a man's assistance.

Through The Garies and Their Friends, Webb creates an alternative black legal fiction in the only realm he can: the literary marketplace. In so doing, he capably dismantles the legal fictions undergirding white identity, and he locates the only true source for stable

identity within the black family. In The Garies and Their Friends, Webb privileges African American men's limited engagement in the market: black male labor can maintain a safe distance from speculative activity, and black wealth remains grounded in material goods that cannot be lost through speculation. The stability of black identity is ultimately ensured, though, by the black wife. Her complete removal from market activity enables the creation of the inviolate home space, which alone can resist white racial violence. In contrast to the secure black home space, the white domestic space is filled with unrest, which Webb attributes to the contractual, rather than affective, ties that tenuously and self-interestedly hold the white family together. In this way, Webb exposes white identity as having no real foundation. It is ephemeral and fluctuating, like the market it has immersed itself in.

Just as Webb embraces the status ideal as a way to bolster and stabilize male self-possession, Harriet Jacobs idealizes status because it provides shelter from the vagaries of the market economy and allows women to inhabit the maternal role completely—a possibility that was foreclosed by Jacobs's enslavement. At the close of her narrative, Jacobs connects her status as a "free" single woman with the difficulty of securing a homespace for herself. She implicitly recognizes that the status construction of marriage would improve the likelihood of her inhabiting an inviolate homespace, surrounded by her children and safe from wage labor, even if entering into such a relationship would mean that she would not be self-possessed. Jacobs's narrative, thus, highlights that the condition of women is a more complex matter than being completely owned by another or of absolutely owning oneself.

Webb and Jacobs both privilege the original function of status: to consolidate property and ensure its ordered transmission across generations. As both their narratives make clear, black families have been systematically denied this ability to transmit property,

and they are also acutely aware of the ways that white society steals or even destroys black family property. In particular, they depict white inheritance as a dangerous force that can rob, displace, or re-enslave the members of the black family. As Mrs. Garie warns Mr. Garie at the beginning of Webb's novel: " 'Heirs always spring up from somewhere.' " Implicitly, she is referring to white heirs and how the power of their greed can turn a person into a commodity. In their depictions of the potential benefits of status, both Webb and Jacobs also envision a black lineage that can lay claim to and share family possessions.

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<sup>1</sup> As Peter Coviello claims, “The free and enfranchised black citizen...was an entity vastly more conceivable in the 1780s than in the 1830s. Similarly white maleness, though it did indeed offer many privileges, such as naturalization and the freedom from enslavement, did not itself guarantee an individual’s civic status....[T]he essential principles around which the nation sought to organize its civic life were simply not identical to the discriminatory powers of race or gender. They had to do more directly, instead, with the qualification of property” (30). For details on the individual state constitutions and how they connected voting rights with property ownership in the early republic, see Sean Wilentz, The Rise of American Democracy, pp. 27-29.

<sup>2</sup> Jeffrey Sklansky emphasizes the ascendancy of the labor theory of property: “As labor became the main measure of value, it was also deemed the basis of property. Ownership of one’s labor and its products became widely regarded as the most basic human right, the material manifestation of ‘self-command’ (19). For more on the transformation of theories of property in the eighteenth century, see Alan Ryan, Property and Political Theory.

<sup>3</sup> This interpretation of Locke’s Second Treatise was asserted by C.B. Macpherson’s influential The Political Theory of Possessive Individualism. For more on Macpherson’s notion of possessive individualism, see 263-64 and 269-70.

<sup>4</sup> For more on the importance of white masculinity in forming the concept of the American citizen, see Dana Nelson, National Manhood, pp. 26-33.

<sup>5</sup> For example, Antoinette Brown Blackwell commented, “The wife owes service and labor to her husband as much and as absolutely as the slave does to his master. This grates harshly upon the ears of Christendom; but it is made palpably and practically true all through our statute books, despite the poetic fancy which views woman as elevated in the social estate; but a little lower than angels” (qtd in Siegel, “Home as Work,” 1101).

<sup>6</sup> Karen Sanchez-Eppler’s Touching Liberty provides important insight into the dangers and violations inherent in white women’s equating their position with that of black female slaves.

<sup>7</sup> For more information on Webb’s biography, see Eric Gardner, “ ‘A Gentleman of Superior Cultivation and Refinement’: Recovering the Biography of Frank J. Webb,” African American Review 35.2 (Summer 2001): 297-308. See also Werner Sollors’s introduction to Frank J. Webb: Fiction, Essays, and Poetry. New York: Toby Press, 2005.

<sup>8</sup> See Richard Brodhead, “Sparing the Rod: Discipline and Fiction in Antebellum America” in Cultures of Letters.

<sup>9</sup> In North Carolina, the most infamous articulation of this concept emerged in the case *State v. Mann* (1829), in which the court ruled that the slave is “doomed in his own person, and his posterity, to live without knowledge, and without the capacity to make anything his own” (*State v. Mann*, 13 N.C. Reports 263; 1829).

<sup>10</sup> Jacobs’s use of “protection” foreshadows the equal protection clause established by the Fourteenth Amendment to the U.S. Constitution in 1868. It is important to underscore here that equal protection was determined not to mean equal access. In *Plessy v. Ferguson* in 1896, the U.S. Supreme Court ruled that enforced separation of the races did not violate the equal protection clause in the fourteenth amendment, establishing the viability of supposedly “separate but equal” public accommodations. This decision underscores the vexed and complicated understanding of “protection” within a racist legal system.

<sup>11</sup> For example, even as late as 1870, a wife was understood as receiving “protection” from her husband and his home. As the Massachusetts Supreme Court ruled in *Magrath v. Magrath*, “There is no more important right of

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the wife, than that which secures to her in the marriage relation the companionship of her husband and the protection of his home" (103 Mass 577, 4 Am Rep 579).

<sup>12</sup> Linda's daughter, Ellen, herself experienced unkind treatment as a domestic servant in the Hobb household. While in her own life, Jacobs continued to find employment as a domestic servant, she recognized that her daughter Louisa would seek a different way to earn wages. In an 1852 letter to her friend Amy Post, Jacobs dismissed the possibility of Louisa joining Jacobs in working in the home of Cornelia Willis (known as the second Mrs. Bruce in Incidents in the Life of a Slave Girl): "Louisa would not be happy to live in that way. She wants to seek her own livelihood where thinks she can be most useful" (qtd in Yellin 253). Rather than serving in another's home, Louisa procured employment in a series of government offices, including the Census Bureau and Treasury Department. Yet as Louisa and other of Jacobs's female friends experienced, women were greatly underpaid compared to their male counterparts. Women's economic disadvantage, even in the wage labor system, was another reason to value the luxury of being removed from the market. Jacobs would not have been so easily convinced that a contracting, wage-earning female laborer would automatically receive the same privileges and opportunities as a contracting man would have.

## CHAPTER FIVE

### “A CRUSADE AGAINST DUTY”: PROPERTY, SELF-POSSESSION, AND THE LAW IN THE NOVELS OF ELIZABETH STODDARD

“I know little of the domestic drama; but I conclude that the most isolated, equable, in-door life contains much worth one’s study....” Elizabeth Stoddard, Temple House.

In her first column as a professional writer—in an October 1854 edition of the Daily Alta California—Elizabeth Stoddard bemoaned the quality of antebellum women’s writing. She disparaged the “pugilism of Fanny Fern, the pathetics of Minnie Myrtle, [and] the abandon of Cassie Cauliflower” (qtd in Morgesons 313). Stoddard would return to the subject of women writers repeatedly, often focusing on how these writers celebrated women’s duty and self-sacrifice. As she wrote in August 1856:

Why will writers, especially female writers, make their heroines so indifferent to good eating, so careless about taking cold, and so impervious to all the creature comforts? The absence of these treats compose their women, with an eternal preachment about self denial....In reading such books I am reminded of what I have thought my mission was: a crusade against Duty—not the duty that is revealed to every man and woman of us by the circumstances of daily life, but that which is cut and fashioned for us by minds totally ignorant of our idiosyncrasies and necessities. (qtd in Morgesons 315)

In Stoddard’s view, women in such novels never desire what they should not. Their self-denial is depicted as somehow easy, almost accidental; they are “indifferent,” “careless,” and “impervious” to comforts. In this column, we see the beginning of the crusade Stoddard will undertake later in her fiction: to attack women’s duty, specifically duty that is constructed and enforced by others.

In Stoddard's view, the nineteenth-century construction of women's duty foreclosed their capacity for self-possession. Stoddard, like many of her contemporaries, valorized self-possession; yet perhaps no writer claimed more insistently that women were prevented from achieving it. Throughout her body of work, Stoddard persistently rejected the cultural belief that women were motivated primarily by emotion, and she insisted instead that every person was driven to achieve a sense of self-ownership. Her "crusade against duty," therefore, did not focus exclusively on women writers; she also openly critiqued legal discourse, which effectively naturalized women's duty during the period.<sup>1</sup> In particular, Stoddard vehemently denied that women's sense of duty was somehow instinctual—that maternal affection, for example, was an inevitable outcome of childbirth.

Stoddard explicitly connected women's lack of self-possession and their subjection to duty with their inability to control property. Like many women's rights advocates of the period, she believed that "a woman should have an entire right to her earnings and her property" (Daily Alta California, Feb 3, 1856).<sup>2</sup> In her newspaper columns and in her personal correspondence, Stoddard argued that owning property and retaining one's earnings were critical to a woman's sense of self-ownership. In a Daily Alta California column, she forcefully commented on the keynote address delivered at a woman's rights convention that she attended in 1856:<sup>3</sup>

[The speaker took] for a text an opinion of Judge Reeve, "That a woman should have no individual rights, because her husband has the right of possession of the person of his wife"—she came down on the audience with Thor's hammer. She talked with daring tact. Women, she said, were the victims of legalized prostitution. Forced by the lust of men into false and inharmonious relations with themselves, compelled to wear the painful honors of maternity...sapped in health and strength, their lives loathingly bitter and burdensome. Therefore she argued the right of self-possession on the part of wives. (Daily Alta California, 11 January 1857; my emphasis)

In this quotation, Stoddard is clearly impressed with the speaker's connection between women's unhappiness and contemporary marriage law, and she joins in the condemnation of one of the most influential domestic law treatises of the antebellum period, Tapping Reeve's The Law of Baron and Femme (1816).<sup>4</sup> As Stoddard's column indicates, married women's ability to control property and retain earnings had become topics of much concern by the mid-nineteenth century. While many agreed that wives should be able to hold property in their own names, the consequences of this property-holding—in other words, the extent to which wives could and should be self-possessed—generated frequent discussion.

Given the prominent legal debates about women's relationship to property, the recurrence of inheritance plots in Stoddard's novels cannot be accidental. Rather, her continual return to the same plot dynamics, particularly women's relationship to family property, registers her concern with the obstacles to women's self-possession. In this chapter, I will examine Stoddard's novels to elucidate her analysis of women's position as well as to highlight her attempts to envision a domestic space that does not rely on an externally prescribed set of duties and responsibilities. Because each of Stoddard's novels ends conventionally with marriage and even domestic seclusion for the female character, critics have focused on her critique of domesticity and have largely ignored her attempts to imagine alternative domestic arrangements. I argue, however, that we should take more seriously Stoddard's attempt to reconcile family life with self-possession. Rather than advocating specific legal reform as the solution, Stoddard removes from the domestic space the social elements—such as property accumulation and inheritance—that bring the law into private life. Therefore, she envisions marriage as an asocial alliance that can accept individuals' drive for self-possession. In her three novels, Stoddard wrestles with and



eventually challenges the Lockean connection between property and self-possession. In her last novel, she revises Locke, separating self-possession from material goods, and demonstrates that the connection between property ownership and self-possession actually encourages self-denial and division.

“An Absolute Self-Possession”: Property and Personhood in The Morgesons

Stoddard’s first novel, The Morgesons, exposes how the pressures of inheritance—property in men’s sphere and duty in women’s sphere—divide families and thwart affection. In other words, external expectations distort family members’ sense of selfhood and purpose. Over the course of the novel, Stoddard seeks a way for people to achieve self-possession through property ownership without succumbing to constraining social expectations.

The effect of much of the novel is to expose the dangers inherent within the family’s dependence on women’s labor and sense of duty. Through Mary Morgeson, the maternal figure in the novel, Stoddard reveals that status relationships are gratifying for women only in the ideal realms of legal decisions and domestic advice literature, which repeatedly envisioned women as fulfilled by such arrangements. As legal historian Norma Basch emphasizes, the fiction of marital unity “meshed neatly with the antebellum stereotype of the self-sacrificing helpmeet as well as her alternate, the lady who stood as a glittering ornament to her husband’s success. In either case the wife’s place in the economy was mediated by the husband” (Eyes of the Law 69). Mary Morgeson strives to embody this stereotype; indeed, she does contribute to the family’s wealth, particularly through her labor to entertain visitors who are often her husband’s business associates. Cassandra Morgeson, Mary’s daughter and

the first-person narrator of the novel, describes the prosperous Morgeson home as literally filled with visitors. She tells the reader that all she can recall from her childhood is the repetitive and dull activities focused on these guests: “arrivals and departures, an eternal smell of cookery, a perpetual changing of beds, and the small talk of vacant minds” (Morgesons 23). Whereas earlier domestic novels depicted women’s labor as edifying for the family, Mary’s labor is directed outward toward visitors, who in turn leave the family “but small opportunity to cultivate family affinities” (Morgesons 22).

Stoddard portrays household labor as alienating and unfulfilling in order to underscore that idealized conceptions of duty deceive women. Although Mary tries to be a good household administrator, Cassandra reveals that:

...there was little systematic housekeeping. Mother had severe turns of planning, and making rules, falling upon us in whirlwinds of reform, shortly allowing the band of habit to snap back, and we resumed our former condition. She had no assistance from father in her ideas of change. It was enough for him to know that he had built a good house to shelter us. (Morgesons 23)

Despite the culture’s persistent claim that women’s labor could engender reform, Mary finds that her efforts produce little change in the family’s habits.<sup>5</sup> Additionally, as the above quotation indicates, the father, Locke, is unmoved by and indifferent to his wife’s efforts. He is rarely present at family lunches, and Cassandra makes it clear that his absence alleviates her mother’s sense of obligation: “As [father] was away...we were the least disturbed then, and it was a lawless, irregular, and unceremonious affair” (Morgesons 24). Here, Stoddard presents lunch as a rare moment during which the restraining rules of propriety and convention temporarily lift. Away from prying eyes, it seems, Mary can relax her sense of duty in order to allow her children to exist more naturally, without laws and ceremonies. Such behavior indicates that Mary’s sense of duty is not natural or born of her affections, but

rather is created by obligations primarily enforced by “outsiders,” including her husband.

Mary Morgeson does not have a “high” or “holy” calling to the work, as the judge in Cropsey v. Sweeney would have it; instead, external pressures and expectations dictate her labor.

In addition to her commitment to household labor, Mary Morgeson hopes to live up to a domestic ideal by serving as a model of chastity for her daughters, Cassandra and Veronica. Throughout the novel, Mary is pious and submissive, and she resists discussions of women’s sensuality or desire.<sup>6</sup> As Cassandra matures, her impending sexual awakening concerns Mary, who warns her somewhat obliquely: “ ‘I foresee the day when the pitcher will come back from the well broken’ ” (Morgesons 63). When Cassandra then asks for her mother’s advice about how to handle her desires, Mary retreats to convention and replies, “ ‘Read the Bible and sew more’ ” (Morgesons 64). In order to model proper behavior for her daughters, Mary hides the sensuality about which they are so curious. For example, when Cassandra learns that Mary had been in love with another man before Locke Morgeson, her mother’s desire fascinates her, but Cassandra realizes that she cannot ask Mary about the story. As Cassandra explains, “...she wished me to believe that she could have no infirmity in common with me...that she must repress all the doubts and longings of her heart for example’s sake” (Morgesons 64). Mary’s unwillingness to discuss sexuality openly means that Cassandra has no guide to help her navigate her desires, and she enters an intense relationship with her older married cousin, which is cut short only by his death. When Cassandra returns from her prolonged visit with him, Mary senses that Cassandra has experienced significant change, but when she invites Cassandra to confide in her, Cassandra matter-of-factly refuses because Mary is too “pure” and “single-hearted” to bear it

(Morgesons 133). Through Mary's repression, Stoddard underscores that women's sense of duty alienates them from their own desires and from one another.

Although Mary attempts to embody the ideal mother through her devotion to domestic tasks, piety, and purity, she never experiences the maternal bonding that domestic literature repeatedly depicted as the rewards of such self-sacrifice. Instead, her daughters find her inscrutable and aloof. Veronica even admits after her mother's death " 'I did not love her' " (Morgesons 13). Yet Mary never appears to interpret the family's emotional distance as evidence of the baselessness of the domestic ideal; instead, she believes that she is simply too faulty to enact such an ideal effectively. As she remorsefully tells Cassandra: " 'I have no influence with you, nor with Veronica.' " (Morgesons 63). As Stoddard makes clear, Mary and Cassandra are alike enough to feel sympathy for each other; however, Mary cannot stop performing as she thinks a mother should. Her failure of "influence" is a result of the inherent flaws in the domestic system—a system created, idealized, and enforced by external discourses like the law. Cassandra is able to recognize and even articulate the limited efficacy of rigid familial roles: " 'If you hadn't been my mother,' " she tells her mother at one moment, " 'I dare say we might have helped each other, my friendship and sympathy have sustained you' " (Morgesons 133). Mary's adherence to duty and her aversion to women's sexuality erect an insurmountable barrier between them. Stoddard's portrayal of Mary demonstrates that when one takes on the role of a "mother," one takes on the responsibility of trying to transmit duty, which thwarts—rather than nurtures—the bonds of affection.

While women in the novel pass notions of feminine duty from one generation to the next, men transmit property. Stoddard repeatedly identifies property as a source of

considerable family strife, and, as we have seen, legal discourse delineates domestic duties and obligations in order to regulate and stabilize the distribution of family wealth.

Throughout The Morgesons, male property inheritance is an underlying obsession of every family, even extending out to the broader community. For example, the day after Arthur Morgeson is born, a family friend remarks, “ ‘Locke Morgeson ought to have a son...to leave his money to,’ ” to which their servant replies, “ ‘...girls...may go to the poor house, as long as the sons have plenty’ ” (Morgesons 25). This attitude dominates the novel. In another example, Locke Morgeson and his father are estranged because Locke’s grandfather passed his inheritance (and his name) on to his grandson, rather than to his own son.<sup>7</sup> Thus, blocked from his inheritance, Locke’s father is often portrayed as frustrated and almost impotent. The danger of men’s dependence on inherited property, however, is most evident in Ben and Desmond Somers, the two brothers whom Veronica and Cassandra marry. A peculiar twist in their parents’ will withholds the inheritance from all of the sons until the youngest boy turns eighteen.<sup>8</sup> This stipulation disrupts family affection to such an extent that Desmond Somers even wishes his youngest brother were dead. Stoddard’s portrayal of these damaged and alienated families shows the devastating possibilities within the status relationship; elusive affection, family members clamoring for property, and the instability of wealth lurk throughout the novel.

In spite of external pressures and internal divisions, the Morgeson family is able to stay connected, albeit tentatively, because of Mary’s household labor. Although Cassandra resents her mother’s notion of duty, Mary’s sudden death forces Cassandra to realize that her mother’s labor was essential to the family. After the funeral, Cassandra describes the state of the family:

The un-thought-of result of mother's death—disorganization, began to show itself. The individuality which had kept the weakness and faults of our family life in abeyance must have been powerful. I attempted to analyze this influence, so strong, yet so invisibly produced. (Morgesons 216)

Mary's labor had provided the house with order, even though the family, including Cassandra, never recognized its power. Because families need women's labor, Cassandra decides that she must follow her mother's domestic example of duty and self-sacrifice. As she tells Veronica, “ ‘An idea of responsibility has come to me—what plain people call Duty’ ” (Morgesons 219). The characters explicitly discuss Cassandra's decision as a loss of her self-possession. When Cassandra assures her aunt that she will take over her mother's role, her aunt wonders, “ ‘Oh, Cassandra, can you give up yourself?’ ” Cassandra responds, “ ‘I must, I suppose....I never...mean to have anything to myself—entirely, you know’ ” (Morgesons 219). In this exchange, Stoddard clearly presents feminine duty as a dispossession of the self. For a woman to be dutiful, she must give up herself and renounce sole proprietorship, in the service of the family. Cassandra's decision also removes her from sexual circulation, enclosing her in her father's house to work and to help prepare for Veronica's wedding. Cassandra's willingness to take on this duty demonstrates Stoddard's belief that the myths surrounding women's self-sacrifice and duty are powerful, even though this self-sacrifice is painful and its rewards are uncertain. Cassandra claims, “It was taken for granted that my own spirit should not rule me. And with what reward? Any, but that of sympathy” (Morgesons 219). Here again, Stoddard emphasizes the failure of domestic ideals; “sympathy” is exactly the kind of compensation women were supposed to receive for their labor. Yet Cassandra, like her mother, finds the domestic ideal elusive.

Locke Morgeson's economic failure intensifies Cassandra's duty compulsion, and, more generally, it underscores women's economic vulnerability to masculine business

practices during the mid-nineteenth century. As legislators who advanced women's property rights recognized, women's comfort and security depended on their male relatives' economic well being.<sup>9</sup> Cassandra reacts to her father's economic failure by negotiating the male systems of inheritance, which in turn re-ignites her desire for self-determination. She convinces Locke not to sell the family's house but instead to let his son-in-law (Veronica's husband, Ben) buy it. Although she in part wants to provide for her sister Veronica, Cassandra's actions also show her growing desire for independence and agency. She finds that she can no longer "repress her desire and longings" as her mother did, and she believes that Ben should be responsible for caring for Veronica. After their wedding ceremony, Cassandra thus rages: "No change, no growth or development! The fulfillment of duty avails me nothing; and self-discipline has passed the necessary point....I would now give my life a new direction....[H]ad I not endured a mute case long enough?" (*Morgesons* 243). Cassandra's words echo Stoddard's Daily Alta California columns in which she condemns both duty and those female characters who exhibited "an eternal preachment about self-denial." Cassandra's outburst serves to distinguish her from earlier heroines in the sentimental tradition, like Gertie Flynt in Maria Cummins's The Lamplighter (1854) or Ellen Montgomery in Susan Warner's The Wide, Wide World (1850) who, over the course of their narratives, learn to silence their desires in favor of the greater good. Cassandra instead learns to reject self-sacrifice and duty as unfulfilling and pointlessly restraining, thereby reversing the trajectory of the typical sentimental novel.

The clearest example of Stoddard's reversal of the sentimental plot occurs after Locke remarries, and Cassandra once again negotiates the male systems of inheritance and property distribution. At that time, she convinces her father to buy back the family home from her

brother-in-law, Ben, and she simultaneously advises Ben to build his own home with his newly inherited fortune. She then demands that her father give the family home to her to live in alone. In these exchanges, Cassandra manipulates and even inverts the normal domestic arrangement by sending her father to live in his wife's home. This inversion allows Cassandra to remain in her family's house as its sole proprietor, which Cassandra realizes on her first day alone in the house:

I was at last left alone in my own house, and I regained an absolute self-possession, and a sense of occupation I had long been a stranger to. My ownership oppressed me, almost, there was so much liberty to realize.  
(Morgesons 248)

Even after she marries Desmond, Cassandra does not leave the family home, as most domestic heroines do, but instead her husband leaves his home in order to live with her. Clearly, Cassandra's position at the close of the novel is unusual; Stoddard does not seem to be envisioning a practical or realistic solution for women's dilemma. However, this should not discount Stoddard's attempts to imagine a woman who embodies the Lockean connection between property and identity. While Locke claimed in the Second Treatise that a person's labor is "unquestionably" his or her own property, women's labor in the nineteenth century was devoted to the maintenance and preservation of the family, without contract or promise of monetary compensation. Their labor was not owned but alienated into bonds of affection. At the end of Stoddard's novel, her heroine is finally able to labor for a home space that she controls.

The centrality of women property owners in the novel is emphasized in several of the minor characters, particularly Alice Morgeson. Alice is the only female character in Stoddard's novels to engage directly in the business world. Early in The Morgesons, Alice is interested only in fashion, society, and matchmaking. However, after her husband's death,



she manages his mills and rejects the female conventions she had hitherto embraced. When Alice subsequently encounters Cassandra's family in Surrey, Cassandra takes note of her newly found liberation: "[I]t was no longer society, dress, housekeeping, which absorbed her, but a larger interest in the world....None of her children were with her; had it been three years earlier, she would not have left home without them" (Morgesons 153). Although critic Louise Penner believes that Alice is "portrayed as threatening" for abandoning the domestic sphere, here Cassandra obviously admires the transformed Alice (141). Similarly, Alice tells Cassandra that she can now understand Cassandra "to the bone and marrow" (Morgesons 125). Alice and Cassandra are connected by their desire for self-possession through economic agency and their rejection of conventional duty. Through her strong female characters, Stoddard asserts that the liberal connection between property ownership and self-possession should be applied consistently to both men and women--which is precisely what married women's property reform had been unable to accomplish.

Cassandra's relatively quick attainment of self-possession, which occurs within the last few pages of the novel, may explain why critics have found the novel's conclusion so frustrating and unfulfilling.<sup>10</sup> Despite Stoddard's powerful articulation of women's repression, she struggles to imagine a sustainable model for women's self-possession. While Stoddard indicates that women can only realize their selfhood away from societal constraints, she also ties women's sense of self to their sexual fulfillment. Like more conventional novelists, however, Stoddard can only envision sexual consummation within marriage, so for her female characters to be truly self-possessed, they paradoxically must be joined to another. Although she strives to portray a marriage that is fulfilling for both men and women, she provides scant details on Cassandra's and Desmond's marital relations. For example, given

such intense focus on family property throughout the novel, it is striking that Stoddard does not explain who actually owns the Morgeson house after Cassandra and Desmond marry. The conclusion should not be completely dismissed, though, because it demonstrates Stoddard's attempt to find meaningful self-ownership through property ownership. In The Morgesons, Stoddard places an unusual amount of emphasis on the connection between women's ability to control property—formerly a completely masculine capability—and their self-possession.

Although Cassandra's story might seem to end conventionally because of her marriage and domestic setting, it is also important to recall the way the novel's conclusion defies generic conventions. At the end of the novel, Cassandra and Desmond do not have a child, and there is no suggestion that they will. In their relationship, Stoddard eliminates successive generations in order to remove what she sees as the tremendously negative pressures of inheritance: property accumulation for men and duty for women. However, the only way she can imagine for safeguarding this self-possession from such damaging external influences is to separate the house entirely from society and its practices, including child rearing and economic exchange.<sup>11</sup> The Morgeson house, at the conclusion of the novel, is enclosed and isolated, even if it can also be construed as liberating.

#### Destroying the "Sentiment of the Soil": The Collapse of Property in Two Men

The Morgesons demonstrates Stoddard's belief that the twin forces of duty transmission—male property accumulation and feminine labor and repression—divide family members against each other and, ultimately, against themselves. Whereas in The Morgesons, Stoddard primarily focuses on how women were affected by an enforced sense of duty, in her

second novel, Two Men, Stoddard becomes interested in how status expectations affected both men and women. In the novel, she presents yet another deeply divided domestic space, but the family home has moved from repressive and isolating to openly divisive and embattled. The family in Two Men has no pretense of affection, and its members are held together, almost against their will, by the dictates of duty. Throughout the novel, Stoddard gives no indication that the family members ever believed in domestic ideals. Rather, duty is explicitly considered a way to control family members and to expand family capital. In Two Men Stoddard attempts to destroy the home space as a destructive repository of empty duty—without, at last, being able to envision a new alternative.

The novel begins when Jason Auster, an earnest carpenter with socialist beliefs, enters a New England coastal town and soon marries the wealthy Sarah Parke. The two have a son, Parke, named for Sarah's powerful family. Soon after Parke's birth, Sarah's prodigal cousin, Osmond Luce, returns with his ten-year old daughter (and co-heir of the Parke family fortune), Philippa.<sup>12</sup> Once Osmond leaves again, Jason becomes the guardian of the Parke family wealth for his son, Parke, and his niece Philippa, and he renounces his personal stake in the inheritance. After Philippa's arrival, the Auster family becomes more intensely passionate and more intensely antagonistic, arguably the most fractured family in all of Stoddard's disturbed domestic fiction. As one of Philippa's suitors notes, the Auster family is in need of a "nucleus...something to knit them together and bring out their good qualities" (Two Men 140). Jason and Sarah are distant, alienated, and resentful toward one another, realizing ultimately that they never loved each other. Sarah is jealous of and acts vindictively toward Philippa, whom she considers merely a threat to her son's share in the family fortune. Philippa in turn develops close relationships with Jason and Parke. Philippa's attachment to

Parke becomes romantically inclined, though unreciprocated, while Jason silently falls in love with Philippa. Meanwhile, Parke, gregarious and independent, becomes attracted to Charlotte Lang, the beautiful daughter of a former slave. Parke seduces Charlotte, they carry on an illicit relationship, and she becomes pregnant. Parke's "sin" results in Charlotte's death, his child's death, and Sarah's death. Soon after, Osmond Luce returns, and Parke leaves with him for South America. Philippa finally returns Jason's affection, and the novel ends with the presumption of their marriage.<sup>13</sup>

In Two Men, Stoddard exposes the dangerous consequences of women's separation from property, particularly through her portrayal of Sarah Parke Auster. Sarah begins the novel as a haughty heiress, deeply attached to her patriarchal grandfather and the family property. Shortly after Jason and Sarah's marriage, her grandfather, the Squire, dies, as if her marriage destroys her association with the Parke legacy. On his deathbed, Sarah realizes "that there were no more Parkes, and she felt a pang because she was a woman, and had been obliged to change her name" (Two Men 20). Stoddard explicitly reveals the pain that Sarah feels when she realizes that, as a woman, her connection to the Parke family will be written over.<sup>14</sup> As a sort of recompense for this, she names her son Parke, and throughout the novel she displaces her ambitions onto him. She also becomes fiercely protective of his share in the family's wealth. When Philippa arrives at the Auster house, Sarah's first thought is that her family is suddenly "half as rich"; Philippa is a competitor to the fortune, not a family member.<sup>15</sup> While Sarah is not a sympathetic character, Stoddard's portrayal makes it clear that Sarah's difficulties lie in her attachment to a family legacy that she must relinquish in marriage.

Whereas Mary Morgeson was introverted and almost made mute in her status position, Sarah is vocal and ferocious about her desire to control her family. Unlike Mary, who attempted to teach her daughters duty because she believed it was her responsibility to serve as a feminine example, Sarah inflicts duty as a punishment onto her niece Philippa, whom she openly despises. The dull regimen that Sarah concocts for Philippa serves as Stoddard's most vivid condemnation of the repetitive and mindless quality of women's household labor. Each day, Philippa practices "...dish towel hemming, patchwork, fine stitching, knitting, muslin work, counting spoons and linen, setting the table and clearing it, keeping chairs at the right angles, airing rooms, closets, clothes, and furniture, and taking care of her own room...."(Two Men 44). As in The Morgesons, women's labor is not edifying, inspirational, or transforming. However, the Morgeson family had believed in the ideals of women's duty. Mary Morgeson and her sister try to instill in the younger girls that women's duty is important; alternatively Sarah simply wants to punish Philippa. And indeed, Philippa finds her work "intensely disagreeable" and her existence "as rigid as that of the penitentiary" (Two Men 44). Sarah also believes that her "daughter" must experience the same upbringing—and the same restraints—that she had. Everything that she lacked, Sarah asserts, Philippa will also lack. As the servant, Elsa, points out, however, Philippa's inheritance should exempt her from needing the same domestic skills that Sarah learned: "‘...you must call to mind that she has got an independent fortune; you hadn't, you know’" (Two Men 44). In other words, Philippa's property should grant her a certain kind of self-possession; she should not need to learn duty because she will always be wealthy. Yet Sarah insists that "money or no money," Philippa must be "taught the sense of duty, and the practice of it," that she "should be taught to be useful, not to enjoy herself after any fashion

of her own. What had been right for herself, Sarah said, must be right for Philippa, whether it suited or not” (Two Men 44). Here, Sarah’s emphasizes that duty is not intended to elevate or benefit a young woman in any way, but instead it robs her of individuality, of “any fashion of her own.” Duty, in other words, actively works against women’s sense of self-possession, regardless of her financial situation.

Sarah acutely senses her lack of self-possession because she relinquished the family property and family name upon marriage. Therefore, she creates a situation in which it does not matter what one owns but instead what one controls. As a result, the Auster family home becomes a battlefield, rather than a site of unity or family connection. This situation is most evident during the two contentious renovations that the family home undergoes. In the first project, Jason transforms the house structurally by removing and reshaping the barriers; “old ceilings, the old partitions, and the old windows” were eliminated (Two Men 40). When he finishes, “nothing reminded the family of [the house’s] previous shape, except the wainscoting in the west parlor, and the broad brick hearth in the kitchen” (Two Men 41). A socialist, Jason wants to join spaces, and his renovation can be interpreted as an attempt to connect the members of the family. Yet Sarah refuses to participate in the renovation and insists on keeping the Squire’s old furniture, preserving a sense of the family’s past. The first renovation destroys the barriers that divide the family in an effort to create communal spaces, so that the family will be rejuvenated rather than ossified in the past.<sup>16</sup> In many ways, it seems to resemble the kind of redecorating that Holgrave endorses at the conclusion of The House of the Seven Gables.

Almost a decade later, “some caprice” causes Sarah to start her own renovation (Two Men 110). She removes all vestiges of her grandfather’s furniture and relegates the “old

regime” to the basement, replacing it with “gay French furniture” (Two Men 117). Stoddard presents Sarah’s renovation as merely a garish interior decorating project, rather than the structural transformation of Jason’s efforts. Sarah’s decisions do not take the family’s identity into account, but seem a misguided effort to keep up with trends. Sarah’s changes might seem contrary to her desire to preserve and sustain her family’s history. Yet, it is actually an attempt to mark the family house as her own, in spite of Jason’s legal possession. The narrator’s claim that “the house was more changed in Sarah’s hands than it had been in Jason’s” seems to indicate that Sarah was successful in her intentions (Two Men 120). As Sarah triumphantly proclaims when the project is finished, “ ‘I do not wish to have the house renovated for fifty years. Whoever will disturb it, disturbs me, dead, or alive’ ” (Two Men 114). Sarah clearly sees her efforts as a way to control the domestic space and wrest it from Jason’s influence, regardless of how it disrupts her family’s legacy.

Throughout Sarah’s renovation, Philippa resists the changes and refuses to allow anyone into her room. In a blatant act of defiance, Philippa keeps the couch, which had belonged to the Squire, in her room and then sews a new cover onto it. When, after the renovation, Sarah finally enters Philippa’s room, she immediately asks Philippa about the couch, to which Philippa proudly responds, “ ‘It is mine now, and I am glad my great-grandfather is dead’ ” (Two Men 119). Philippa “writes” herself into her lineage through property, transforming an inherited piece of property into her own. Although Philippa and Sarah antagonize one another, it is clear in this scene that Philippa has learned from Sarah the importance of controlling family property in order to claim one’s place. For the two women, the only way to have their family identity secure is through an intensive control of domestic space. Stoddard’s emphasis on the domestic space as a battlefield for competing wills

underscores her persistent claim that women's duty does not serve an ameliorative function, but instead poisons the domestic atmosphere.

Sarah and Philippa's antagonism thus repeatedly returns to a debate over who has property claims to the family property. One of Philippa's suitors, Mr. Ritchings, notes Philippa's intense engagement with the Auster property when he remarks to Sarah, " '...if ever a girl understood what the 'sentiment of the soil' is, it is Philippa' " (Two Men 126). Sarah responds to Mr. Ritching's comment in such a way that, "without actually lying" is designed "to give him an impression that it was by no means certain that Philippa would inherit much of the 'soil' " (Two Men 126). In other words, Sarah tries to undermine Philippa's marriage prospects by convincing others that Philippa has no legal right to the family property. This exchange emphasizes the classic plot of the domestic novel: women are viewed as vessels for family wealth, and their value on the marriage market is directly related to their family's property value. Sarah lies to Mr. Ritchings because she hopes to destroy Philippa's chance at happiness but also to prevent Philippa from alienating the family property to a new family. However, Philippa has once again learned deeply embedded lessons about the importance of family property from Sarah; Philippa also does not want to see her stake in the family property alienated away from the Parke clan. Instead, she hopes to marry her cousin, Parke, in order to keep the family property intact. As she describes it to her friend Theresa Bond, her plan for marriage is "consolidation": an interestingly business-like phrase to describe romantic hopes (Two Men 77). Philippa's desire to control family property essentially shape her sexual desires. For most of the novel, therefore, she acts with a single purpose: to marry her cousin Parke. Philippa is the only of Stoddard's women characters to try to enact the role of the domestic heroine who reunites the



competing claims to family land, just as Elizabeth Temple does in The Pioneers and Phoebe Pyncheon does in The House of the Seven Gables.<sup>17</sup>

Thus, Philippa, often configured as an exotic outsider to the family, perceives family property as a way to legitimize her identity as a part of the Parke legacy.<sup>18</sup> As she tells Jason, “ ‘I don’t know...how much my soul could gather around anything foreign to Crest. When I say Crest, I mean our own surroundings, you know; lately my vision narrows to these walls, our acres, each rock and tree, the sea before the house, the sky over it’ ” (Two Men 195-6). In this passage, all of Philippa’s markers are relative to the family’s domestic space; typical for women, Philippa’s sense of place has narrowed entirely to family property. In her description of her surroundings, Philippa also conflates the two meanings of domestic: family home space and the home country (in contradistinction to “foreign” lands).<sup>19</sup> Duty and her almost unceasing desire to integrate herself into the Auster family has transformed the home space into Philippa’s entire world.

Stoddard’s portrayal of Philippa underscores the notion that domesticity could serve an assimilative function, but Stoddard, interestingly, represents the cost of such assimilation: division, repression, and unhappiness. Despite Philippa’s “sentiment of the soil,” when Osmond asks Philippa to leave with him for South America, she feels a strong desire to escape and go with him. Stoddard uses striking language to describe the scene in which Philippa must make a critical choice between her communal identity and her internal desires:

A spark of nature was elicited in both [Philippa and Osmond] at last; their faces wore the same eager, passionate, overcoming expression. For an instant she was seized with his nomadic spirit, and set her foot forward as if to enter upon his free, salient, purposeless life. With outstretched hands, he urged her in a voice so altered by tenderness and entreaty that she wondered at the feeling of resistance which compelled her to struggle with the phantoms of Liberty and Pleasure which his words had evoked. (Two Men 213).

Here “at last,” Philippa feels a “natural spark” that is her connection to her father’s nomadic life, and she feels tempted by the possibility of transgressing the female duties enforced upon her. After this momentary temptation, though, Philippa’s face changes, and the physical resemblance between her and Osmond fades. She refuses to leave the home space and her duties there because she believes they protect her from her desires: “ ‘I succumb to tradition and custom because I love them. But if these barriers should be removed, I feel I have within that could rise, and overtop excess’ ” (Two Men 231).

Men, unlike the women in Stoddard’s novels, have the ability—the access to self-possession—to leave the family home.<sup>20</sup> The most obvious example of this is Osmond Luce, the prodigal male family member, who seems incapable of staying with the family for even as long as a few weeks. Parke, too, eventually leaves Crest and the family property, forsaking his stake in growing the family property. Throughout the novel, other characters indicate that it is Parke’s inheritance that encourages him to enjoy an indolent and spoiled life, largely encouraged by his mother.<sup>21</sup> As opposed to women’s almost paranoid level of awareness of their social investments, Parke is allowed to act only on his desire, as when he pursues Charlotte Lang, the daughter of a former slave. Initially, Sarah is not worried about Parke’s kindness to Charlotte because, she believes, the “spirit of society [is] too strong” to allow him to commit the sin of miscegenation. (Two Men 147). Sarah has a woman’s understanding of societal pull: that Parke’s sense of social responsibility will constrain his desires just like Philippa’s love of custom has constrained her exotic, nomadic nature. Parke, however, continues to seduce Charlotte, regardless of what the town thinks, and it is only her pregnancy—his need to think about the duty toward his progeny—that forces Parke to consider the repercussions of his actions. Sarah claims that she forgives Parke, but the

incident kills her and destroys Parke's reputation. Parke insists on burying her at the Parke family burial site, thereby severing ties with her family but also forcing his mother, who's buried next to her, to share property and status with Charlotte.<sup>22</sup>

Throughout the novel, Stoddard asserts that men can and should acquire self-possession through property ownership. Because they control property and, therefore, gain self-possession, men alone can recognize how their family identity should not dictate their fate. Parke, therefore, sees the family wealth as constraining, as forcing social obligations upon him. After Charlotte, the baby, and Sarah die, Parke decides to flee Crest with Osmond so that he may live completely free from social pressures. He wants, like his uncle Osmond, to leave Crest and realize his self-possession. Yet Osmond urges Parke to reconsider this decision: “ ‘You have something...to keep you here; you are your own master. I was not when I left Crest; not until I put this ancient town far behind me did I know what it was to belong to myself. You have almost too much money to commence my career picturesquely.’ ” (*Two Men* 226 - emphasis). Osmond left Crest when he had no inheritance to claim, and by relinquishing his eventual hold on the property, he seems to have completely separated himself from the Parke family legacy.

Stoddard's second novel is permeated with discussions of the relationship between property ownership, self-possession, and civil identity. *Two Men* opens with Jason entering the town of Crest with “simple confidence that he should find the place where he could earn a living by his trade, and put in practice certain theories concerning the rights of men and property...” (*Two Men* 1—my emphasis). Jason, then, implicitly rejects the increasingly powerful market economy that alienates laborer from product. However, once Jason becomes attracted to and then marries Sarah, he struggles to maintain his beliefs. Her

“executive ability as the mistress and manager” causes him to feel “the impotence of his crude ideas and his individual isolation” (Two Men 112). The duty-bound dimensions of the domestic system ultimately overcome his sense of individuality and his theories of property. So, Jason, “suddenly ushered from one sphere to another,” does “what most men would do”: he alters his ideals to fit his new circumstances(Two Men 12). He enters the contract economy and works diligently to increase the wealth of the estate. Yet when Philippa arrives, Sarah’s disdain for her and sense of her as a competitor reawakens him to the evils of private property. Jason decides that he will do no more to increase the value of the family property, vowing that

...there never should be an issue regarding the Squire’s property, as far as he was concerned; if it depreciated naturally, the heirs must bear the loss equally....[He] tied up the property beyond his control, that, morally speaking, he was able to consider himself as outside the family. (Two Men 46-7).

From this point on in the novel, Jason removes himself from the market economy entirely, “enter[ing] into no speculations, and ma[king] no contracts” (Two Men 47). Therefore, Jason surrenders the typical male duty of growing family property for the next generation. Jason recognizes what so many of Stoddard’s characters do not: the family is not held together by the deep affection bonds espoused in the idealized portrayals of status relationships. Rather, the family is held together by duty and the desire to earn more capital. By exempting himself from the contract economy, the sphere in which he would be able to increase family wealth, Jason self-consciously removes himself from bonds of the family. When Parke decides to leave for South America, Jason sees the departure as an opportunity to make the situation between them clear, and he insists that he will no longer manage the family property for Parke. Jason tells Parke: “ ‘I must be as free of you as you are of me’ ” (Two Men 234). By breaking that relationship, he severs the last ties he has to his son.

With his son gone and his wife dead, Jason feels that he can tell Philippa of his love for her. In confessing his feelings, he claims that he was “nothing to himself” while he was married to Sarah and that all of his relations “implied little with [him] beyond duty” (Two Men 269). The pressures to fill a status role of protector and provider destroyed his chance for self-possession. Philippa believes that he is complaining about a burden that she has known too well—duty: “You found no satisfaction in duty! Who does? Something that we esteem, however, pushes us on towards its aim, as strenuously as if were our most beautiful ideal” (Two Men 269). Philippa, still bound by her devotion to family property and family relations, retains hope that duty has its own aim—even when it does not provide satisfaction. For Philippa, duty is performed without the hope for the exchange that would come as a part of a contract relationship. Although Philippa seems embedded in relational ways of thinking, she finds that she “for the life of her she could not name the character of the relation” between her and Jason (Two Men 274). Just as she is perplexed by her relationship with Jason, she simultaneously acknowledges the baselessness of her feelings for Parke. Once he is “away from Crest, he could not be to her what she had believed he would be”; he could no longer give her the access to family property that he would make her identity as a Parke completely legitimized (Two Men 254). With the possibility for “consolidation” finally foreclosed, with the twin systems of duty and property accumulation ended, her connection to Parke has faded as well.

The Auster family, thus, “disintegrates” toward the close of the novel. Philippa begins to extricate herself from her previously held notions about duty and the importance of family property. The complete destruction of these beliefs, however, comes when Jason decides to leave Crest. At this point, Philippa comes to understand that Jason is poor—that

he has given all to which he was entitled to her and Parke. In response to Philippa's comment, Jason rages: " 'A poor man! Have I been a rich one ever? Ungenerous girl, think a moment of the nonentity, me—who, for twenty years, have managed the Parke property—which, like a beast, has walked and waved its horns before all the family, including yourself—and held you in thrall' " (Two Men 294). Jason's outburst vividly portrays the family's perpetual delusion in property. By the end of the novel, he has rejected their way of life completely. He has surrendered his role as the executor of the trust, and he slowly transitions to hunting and carpentry instead. He comes, in the end, to live an idyllic, anachronistic life in which he engages directly with the product of his labor, rather than subsuming his identity into the ephemeral wealth of the economies of credit and contract. Ultimately, however, he cannot relinquish the one true affectionate bond that remains in his life—his attachment to Philippa.

Typical of Stoddard's novels, her characters do not pronounce intentions to marry or make formal engagements. Rather, Jason and Philippa undergo a gradual transformation, which culminates in a conversation in which each simply calls the other husband and wife. Again, Stoddard is clear that their marriage will be removed from the social elements and prescriptions of the status-based view of marriage. Even more so than the characters at the conclusion of The Morgesons, Jason and Philippa will be left alone in the house, with no children, and they seem to have no intention of growing Philippa's inherited wealth. Their isolation within the house is made clear when their neighbor Mrs. Rogers suggests another renovation because, as she claims, " 'the beams are rotting' " (Two Men 262). Her assertion that fundamental aspects of the house—arguably, its age and deep connections to the past—endanger Philippa and Jason are quickly dismissed. Both Jason and Philippa deny renewal

through renovation; they ultimately reject Holgrave's solution for long-term domestic happiness, espoused at the end of the House of the Seven Gables. Instead, Philippa matter-of-factly concedes to Mrs. Rogers, “ ‘[The house] may fall on us someday,’ ” to which Jason retorts, “ ‘I hope nobody will take the trouble to unroof us if it happens’ ” (Two Men 269). As in The Morgesons, the married couple who survives the family—and Stoddard does present it as mere survival—encloses itself inside the house with no intention or mention of starting a family of their own. In the conclusion of Two Men Stoddard implies that the purging of familial and generational bonds are required for the couple to continue. Yet this new couple—of which neither party is a “true” Parke—is left in an isolated, rotting house with no sense for possible renewal. It is as if at the end of Two Men, Stoddard is prepared to acknowledge the dangerous trap of property, but she still seems unsure about romantic love's ability to combat powerful theories of property and self-possession. It is in her last novel, Temple House, in which she will move closer toward developing her own theory of self-possession outside of property ownership.

#### The Ties that Bind: Looking Beyond the Family in Temple House

Stoddard continues to explore family alienation as a result of property accumulation and duty in Two Men and Temple House.<sup>23</sup> In Temple House, her final novel, she vehemently rejects the belief that the family is a naturally affective collection of individuals that, as such, is responsible for establishing social bonds and for rearing good citizens. Such claims were popular among legal theorists who asserted that the marriage contract, unlike a business contract, had important social obligations. They considered marriage—and, by

extension, the family—a microcosm of republican government.<sup>24</sup> In Temple House, as in The Morgesons, Stoddard continues to demonstrate how the pressure of family duty actually restrains and impedes affection. In Temple House, however, Stoddard makes a more sophisticated case that marriage is an extremely private and even asocial alliance between individuals, and she begins to envision a new kind of community that can reject property accumulation and duty altogether.

Temple House is a family estate in Kent, a small New England whaling town. Argus Gates, a sea captain, has inherited the house from a distant relative and, soon after he moves in, his wife dies. Argus's brother, George, is an irresponsible libertine, and after meeting George's wife, Roxalana, Argus invites George and Roxalana to live with him in Temple House, anticipating that George will eventually abandon Roxalana. George and Roxalana soon have a daughter, whom they name Temple ("Tempe"), in honor of the family who passed down the estate to Argus. Eventually, George does leave the family. At that point, Argus retires from the sea, and he and Roxalana continue to live together, although not romantically. The novel's action begins with the three Gateses—Argus, Roxalana, and Tempe—living a quiet life at Temple House, interacting almost exclusively with Mat Sutcliffe, Argus's first mate, and Virginia Brande, their wealthy and beautiful young neighbor.

The inhabitants of Temple House are contrasted with the Brande family, one of the most prosperous in Kent. Cyrus Brande is a prominent, pious businessman, who runs a forge, Stoddard's symbol of the "emergent northern-industrial order and...an emblem of the future" (Weinauer 242).<sup>25</sup> In the Brande home, communal living consists of empty ritual, enforced by duty rather than affection, and identity is subsumed into property. The family



members are divided and unhappy, and they constantly fight each other and their own desires. Although the Brande house appears luxurious and peaceful to outsiders, Stoddard reveals it to be a nightmarish, oppressive space, centered on prescribed roles and enforced obligations. Rhoda Brande, the family's matriarch, serves as Stoddard's most trenchant critique of women's duty in any of her novels. Stoddard describes Rhoda as:

...indolent, whining, uneasy, and endeavored by drugs and stimulants to deaden herself against the torments of her position. Cyrus was patient with her, but excused her from none of the religious and secular duties which he had imposed upon himself, as a portion of the life he thought necessary to lead. (Temple House 34)

As the novel continues, Rhoda becomes increasingly violent, ripping out Virginia's hair and stabbing her husband in the cheek with scissors. All of her outbursts pervert any positive associations with domestic tools: "fixing" hair by ripping it out, for example, or using scissors as a weapon. Her actions embody the horrific consequences of forcing women to live exclusively in accord with their domestic duties.

Through her portrayal of Rhoda Brande, Stoddard draws attention to the fictitiousness of such legal concepts as marital unity; although status roles provide clear responsibilities and expectations, they are enforced upon individuals who do not and sometimes cannot live up to them. "It was one of Mr. Brande's requirements," Stoddard relates, "that his wife, in whatever condition of nervousness, lethargy, or feebleness, should appear at breakfast" (100). Brande's demands and rituals do not, however, make such rituals effectively bind the family. Even Brande must eventually face Rhoda's inability to fulfill her duty: "He could compel her to sit at the table,—but he could not force her to eat, nor prevent the occasional fall of a cup or the spilling of coffee by her trembling hand" (Temple House 100-01). With her "puffy eyes and lax mouth, her hoarse sighs, the handsome lace cap awry on her head, the

mixed finery of her dress,” Mrs. Brande is a mockery of the pleasant wife (Temple House 100). She is the grotesque version of the silent and repressed Mary Morgeson.

Like the female characters who struggle with their responsibilities, Cyrus Brande also believes that he must quell his desires in order to live a socially acceptable life. As Stoddard reveals, he is plagued by “...a hundred dreams [of escaping his family that] swarmed in his mind, like stinging bees, laden with honey” (Temple House 104). Cyrus cannot follow these “dreams” because he is afraid of what he might do without the imposing constraints of duty: “...away from the restraints of family, society, and the church—something in himself would hold him back from the indulgence, the desire for which gnawed into his life like a worm!” (Temple House 104). Simply put, Cyrus cannot imagine a life outside of the dictates of externally imposed duty. He is plagued by desires that he believes are immoral, and despite his hopes that societal constraints will contain them, they continually “gnaw” at and “sting” him. With Cyrus, Stoddard portrays a man who, based on classical liberal notions of ownership, should have self-possession. Yet, while Cyrus might own property, he has no ownership over his self because he has no control over his desires.

Although men and women both experience inner turmoil because of duty, Stoddard continues to condemn most pointedly women’s inability to control wealth, particularly since women’s duty often enables men to acquire more and more property. In Temple House, Virginia Brande, Cyrus’s daughter, is expected to marry the wealthy Mr. Carfield, who will consequently save the Brande family from financial ruin. Cyrus Brande commands Virginia: “ ‘I desire you to accept Mr. Carfield. The voice of nature demands it—the ties of property, our business, my welfare’ ” (Temple House 268). Brande claims that his reasons for the match are natural; yet the ties he mentions—property, business, and economic welfare—are clearly

social. Aware of her father's distortions, Virginia realizes that she has no stake in the family property and is instead simply a vessel for male property accumulation: "To her, Mr. Carfield...was merely the representative of money....How she despised the signs of wealth about her,—and none of it hers!" (Temple House 197-98). Although Virginia believes her father's demands are unreasonable, she insists that she must still fulfill her duties to him: "I must still be a dutiful daughter. I rebel against the service, though; it hurts, and strains, and tears...the family tie so binds my feet that I can not advance one step in any path where my soul should take its pride and pleasure" (Temple House 150). Domestic duty, in Stoddard's view, operates the same way that foot-binding does: externally enforced restraints limit one's ability to pursue one's desires. Thus, Virginia believes that to act against her father's wishes—and in favor of her own self-possession—would destroy her family. She cannot see that her father's relentless pursuit of property and respectability has eroded her family; rather, she blames her own desires: "To the end would she live with her father; their house should not be divided because of her conduct" (Temple House 272). Duty haunts the women of Stoddard's novels, causing them to believe that only through their self-sacrifice will their families survive.

Stoddard contrasts the lack of self-possession at the Brande house with the independent space of Temple House. The inhabitants of Temple House are neither socially admired nor rich; as the narrator comments, the Brande house and Temple house are "as different as pound cake was to molasses gingerbread" (Temple House 40). In fact, Tempe Gates often complains about their lack of luxury and determines to marry John Drake, heir of the wealthiest family in Kent. However, he dies on their honeymoon, and the aristocratic Drake family rejects Tempe. Upon returning to Temple House, she sees anew "the

wonderful talent of self-ownership which belonged to Argus and Roxalana....[T]hey seemed superior to the persons she had lately been intimate with; their outside possessions weighed nothing to that instinct of self-possession so well developed!" (Temple House 73). Unlike Cyrus Brande, whose character reveals the dangers of anchoring one's identity in property, Roxalana and Argus provide a model for self-possession that depends entirely on the self, rather than material goods.

In particular, Roxalana and Argus have no desire to expand their ancestral property or enter the market. Neither works outside the home, and Stoddard repeatedly refers to the lack of consumption and spending at Temple House. Argus even puts forth his own theory about property ownership, which he discusses with Sebastian, a wealthy man whom Argus saved from a shipwreck and then befriended. While boasting that he has "no ties" to property, Argus explains:

"I own nothing. What is the ownership of a shell,—named when men and women built it together, and made themselves its kernel—Temple House? The ties of property,—mutual interests,—those relations which slip into each other like the scales in a coat of mail, and which compose the armor worn to keep us erect before God, and crooked with the devil,—are not for me." (Temple House 183)

Through the positive models of Argus and Roxalana and the negative example of Cyrus Brande, Stoddard shifts the basis of self-ownership that she envisioned in The Morgesons. In Temple House, she asserts that the ties of property are seductive, but dangerously unstable, and thus are a precarious basis for identity.

Rather than the typical domestic space in which wealth multiplies and is then transmitted across generations, Temple House is a space in which all forms of wealth are annihilated.<sup>26</sup> Various characters who long for freedom become attracted to the uninhibited space of Temple House, but before coming to live there, these new residents all must

surrender their property and especially their money before joining the community. First, Sebastian essentially donates his wealth to Argus. When Virginia is contemplating her escape from her father's house to Temple House, Roxalana discourages her from bringing cash: " 'I think I would not like to have you come with money; it might unsettle us terribly. I am sure Argus dislikes the cares of property' " (Temple House 224). The plot of Temple House, therefore, works to sever the ties of property and duty that repress people's desires and divide them against themselves.

Through the removal of duty and property accumulation from the domestic space, Temple House resembles Stoddard's other novels, which end with similar rejections of such obstacles to self-possession. If Stoddard has a model for female self-possession, it seems to arise from her obvious admiration for her strong male characters like Argus Gates who are so self-possessed that they are indifferent to the outside world.<sup>27</sup> However, in Temple House, Stoddard begins to question the potentially negative consequences of such extreme self-possession. At the start of the novel, Argus is isolated and asocial; he lives, he claims, only for himself. The novel details a series of rather fantastical events that cause Argus to question his condition. Much of Stoddard's portrait of Argus revolves around his struggle between a desire for individuality and his desire for Virginia Brande, as in the following passage:

He set aside [Virginia's] beauty, sweetness, and power... and shut his eyes upon that selfishness which might calculate her as the companion and friend of his lonely age, and pondered over one characteristic,—that which made him remarkable—his secretive, impassive individuality,—whether he had better live on it, as his substance, or share it with Virginia, to her advantage and his happiness. (Temple House 261)

In order to act on his desire for Virginia Brande, Argus realizes that he must relinquish this extreme form of individuality, which he ultimately decides to do.<sup>28</sup>

While Argus must overcome his desire for independence, Virginia, as a woman, must struggle against her almost crippling sense of duty. Virginia worries that her love for Argus is too selfish and could lead her into a dangerously asocial partnership: “ ‘To live with him would...prove so seductive and binding an alliance, which though conscience might vaguely accuse me of falling into the depths of a great temptation, I should never beseech God to deliver me from it’ ” (Temple House 222). For duty-bound Virginia, a completely fulfilling love threatens to remove her from the dictates of conscience or of God. Once again in Stoddard’s work, women’s sense of duty prevents them from expressing their natural sexual desires; her resistance to a fulfilling romantic relationship is a sign of her lack of self-possession. Responding to Virginia’s concerns, Roxalana argues that love must be considered separately from social concerns, like conscience, religion, and, presumably, duty: “ ‘I do not see what a profound love has to do with principle, or reason. If love was not a separate power, impregnable to conscience, human nature would be a feebly sustained thing. [Love] should exist for itself, and by itself’ ” (Temple House 222). Roxalana’s statement encapsulates Stoddard’s persistent, although diffuse, claims that romantic love does not support or model the larger society, which is exactly what legal discourse asserted when it justified hierarchical, status-based marital relations.

Stoddard repeatedly makes clear in the novel that love must be understood as intensely private; while it connects two people to one another, it does not serve as the bridge between those two people and their community. She continually implies that love cannot and should not be held answerable to the demands of society or morality, as legal discourse and domestic novels typically asserted. In multiple discussions, Roxalana condemns parents who attempt to arrange their children’s marriages, as Cyrus Brande does. When Sebastian asks

Roxalana to approve of his marriage to Tempe, Roxalana responds, “ ‘Why in the world...have you not conversed with Tempe on this subject? It is not the fashion here, for parents to marry their children. We marry ourselves in this country, and so the idea of family is disintegrated, like all our institutions’ ” (Temple House 314-15). Stoddard’s proclamation of the dissolution of blood relations is not unique in the period. As Cindy Weinstein has astutely noted about other women’s novels: “...novel after novel is engaged in ridding itself of the paternalism of consanguinity by replacing it with a family that is based on affection and organized according to a paradigm of contract....” (9). Stoddard, however, refuses to reconstruct a new form of nuclear family—contractual or otherwise—out of the remains. As we have seen, she is deeply suspicious of the family structure, believing even that kinship signifiers inevitably call status relationships into being. Thus, the inhabitants of Temple House, who seem to live without duty and prescribed roles, refuse to recognize kinship. Argus forbids Tempe from calling him “uncle,” even though that is his relationship to her. And, when Virginia asks Sebastian if he will act as her brother, he refuses, asserting, “I will be no woman’s brother....” (Temple House 300). Stoddard makes evident that the inhabitants of Temple House should not understand their relationships as a reconfiguration of the consanguineous family, renewed by the terms of voluntary contract.<sup>29</sup> She seems to view this as a false construct, another mask that obscures relationships of duty as relationships of love. Thus, at the end of her last novel, Stoddard removes all markers of status, including the signifiers of familial relation.

The proposal of a love “alliance,” as Virginia calls it, indicates Stoddard’s disapproval of contemporary conceptions of the marriage contract. Her intensely private view of marriage could explain why Stoddard depicts few courtships and no formal marriage

ceremonies in her novels. Instead, her couples become engaged to be married in private conversations; there is no asking for a hand, no agreement to set a date. The arrangements that Stoddard portrays went against prevailing legal opinion, which claimed that, because marriage was more than a mere contract, it required a formal ceremony to be legally recognized. In an 1872 Maryland case, for example, the court denied the legality of a marriage because the couple had entered into the union privately and without ceremony. As the presiding judge wrote, “To constitute lawful marriage here there must be superadded to the civil contract some religious ceremony....These loose and irregular contracts, as a general thing, derive no support from morals or religion, but are most generally founded in a wanton and licentious cohabitation” (McCurdy 86).<sup>30</sup> With Temple House, especially, Stoddard places her faith in the “loose and irregular,” while denying the social elements of marriage, including religious ceremonies and public witnesses.

The conclusions of Stoddard’s novels understandably can create a kind of disappointment in modern readers. Because her novels provide such powerful critiques of domesticity, her heroines’ sudden marriages can seem like a capitulation to the prevailing culture, as if Stoddard could not sustain her criticisms past a certain point or as if she simply surrendered to generic conventions. While Stoddard may not deliver the final blow to domesticity for which today’s readers hope, it is important to emphasize how and why Stoddard re-imagines the marriage relationship. Indeed, other novels of the period that condemned women’s repression often abandoned marriage altogether, in essence equating marriage with status.<sup>31</sup> After all, married women’s duties, as well as the codes of domesticity, were inextricably tied to the legal construction of marriage in the mid-nineteenth century. Viewing Stoddard’s novels through this historical context reminds us that women’s



legal position did not move linearly and inevitably from “status to contract” over the course of the nineteenth century. By providing an alternative model of marriage, which excludes children and property transmission, Stoddard attempts to remove the law’s power over individual relationships and thereby disassociate marriage from externally imposed expectations. While many writers portrayed married women’s struggles for self-possession, the solution for women’s difficulties was not evident, even if it might appear more obvious to today’s readers. Rather than be disappointed in Stoddard’s inability to see her way out of such large cultural problems, we should see her solutions as a reflection of the dimensions, complexities, and contours of the many debates surrounding women’s role in marriage—debates that would not be settled for decades after her death.

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<sup>1</sup> As Elizabeth Maddock Dillon claims, the mid-nineteenth century marks a time “when privacy is most clearly related to gender and political subjectivity, and at which a binary model of gender is most strongly naturalized.” (7).

<sup>2</sup> A longer selection from this column further highlights the complexity of Stoddard’s views about gender relations: “In other respects [aside from property rights] women have the best of it. I maintain that most women live with the view of being provided for in some way; they unhesitatingly adopt the idea of their female helplessness.” Though this statement does reveal a certain antipathy toward women reformers, it also demonstrates Stoddard’s distaste for the prescribed roles for women within the contemporary construction of the marriage contract. Just as she warns against men insisting on dominance, she is disturbed by wives who take on the role of vulnerable helpmate.

<sup>3</sup> Stoddard probably attended the Seventh National Women’s Rights Convention, which was held in New York City in November 1856. Lucy Stone delivered the keynote address.

<sup>4</sup> For more on Reeve, see Basch, *In the Eyes of the Law* 57-65.

<sup>5</sup> It is appropriate to note here the class biases of Stoddard’s novels. Like other writers of domestic fiction, Stoddard portrays the burdens of women’s labor, often depicting the difficulties of managing lower-class servants—a complaint Stoddard also articulated throughout her personal correspondence. While it is important to recognize how Stoddard effectively erases servants’ more grueling labor, I seek to emphasize how Stoddard demystifies women’s labor more generally by removing any sense of psychological or emotional benefit from its practice.

<sup>6</sup> Through much of the novel, Stoddard insinuates that New England Calvinism has contributed to Mary’s repression and unhappiness. For example, Veronica directly blames Mary’s Puritan father for Mary’s

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repression: “ ‘I believe...that Grand’ther Warren nearly crushed you.... Did you know that you had any wants then? Or dare to dream anything beside what he laid down for you?’ ” (64). Alice Morgeson also confides to Cassandra after meeting Mary, “The Puritans have much to answer for in your mother.” (153).

<sup>7</sup> The unusualness of Locke as a Christian name—particularly since it is a family name, passed down through generations—is another signal of Stoddard’s intense concern with questions of property and self-possession throughout the novel.

<sup>8</sup> In the Somers family, it is the mother, Bellevue Peckersgill Somers, who brought the money into the Somers family, which turns Mr. Somers into a man who is “...faded and bedridden, an inverted parody of the hapless female hanger-on....” (52). With the Somers family, then, Stoddard makes clear the centrality of property for men’s sense of power and identity. Here, Stoddard also presents an inversion of status roles, but it is important to note that there remain only two possibilities: the powerful property owner or the weakened hanger on.

<sup>9</sup> This statement is not intended to simplify judges’ positions. While it is true that many were more conservative than state legislators, their view of women’s economic agency was often a result of the kinds of cases over which they presided. Most court cases involving marital property involved a creditor trying to receive payment from a husband who astutely took advantage of married women’s property rights to shield his assets. Faced with so many cases dealing with credit fraud, judges encountered married women who were often complicit in their husband’s schemes, which might account for their negative view of the reform legislation. For more, see Lawrence M. Friedman 147-149.

<sup>10</sup> For example, Alaimo claims that the conclusion of the novel marks the final stage of Cassandra’s “descent into ladyhood.” In her opinion, by staying in the family’s Surrey home, Cassy’s chooses domestic restraint over sexual liberation: “Though Cassandra’s inheritance of the house should empower her, the close identification between Cass[andra] and her house suggests she has internalized her external entrapment within the domestic realm” (35).

<sup>11</sup> For more on the removal of the market in *The Morgesons*, see Julia Stern, who notes, “...the Morgeson house...has become a reconstructed dwelling, with capitalist patriarchs and their acquisitive wives forever expelled” (122).

<sup>12</sup> Stoddard does not explain exactly how Philippa is considered a co-heir of the land. It is important to note that *Two Men* is set in the past, though Stoddard does not establish exactly when. It is likely that it would have been after the Massachusetts state legislature passed its first significant married women’s property rights in 1845, though before it passed one of the first married women’s earnings laws in 1855. Since both Sarah’s parents and Osmond’s parents died young, the Squire’s (Sarah’s and Osmond’s grandfather) wealth would have gone directly to Sarah and Osmond. Unless the Squire willed it directly to Sarah (which it seems from Sarah’s resentful response to his death that he did not), her share of the Squire’s property would have come under her husband’s control. Osmond, of course, would have been able to control his portion of the wealth for himself. Rather than the adult generation spend the money, it seems that Jason and Osmond agree to aggregate all of the Squire’s wealth into a trust for Philippa and for Parke. Jason then manages the trust. It should be noted that the most common way that married women’s separate estate was protected before the passage of married women property rights was with the creation of trusts. Thus, even if no married property reform acts had been passed, Philippa could still have had sole control over her portion of the trust once she reached legal age. For more information on trust formation and the married women’s property acts in Massachusetts, see Chused.

<sup>13</sup> For an in-depth discussion of the plot, see Matlack, “The Literary Career of Elizabeth Barstow Stoddard,” 339-61.

<sup>14</sup> It is unclear whether or not women’s property law had been reformed at the time of the novel’s events. An essential component of my argument, though, is that even if Sarah could hold the property in her name, her access to self-possession would be troubled; property did not give women a right to a civic identity. The property would always belong to a “new family,” as would her son. The naming convention would still have

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erased Sarah's connection to her family, and so she attempts to reinscribe that connection through her son's name.

<sup>15</sup> The novel does not make clear how Philippa's inheritance is established, but both Parke's and Philippa's share of Sarah's grandfather's estate is held in a trust overseen by Jason Auster.

<sup>16</sup> Interestingly, Jason's destruction of barriers and attempt to join spaces rejects early nineteenth century architectural trends. The architecture reform movement of the period, most famously Andrew Jackson Downing and Orson Fowler, advocated a further demarcation of space so that different labors would be segregated from public view. Jason refuses to efface the signs of labor in the domestic space. For more on domestic architecture reform in the early nineteenth century, see Gwendolyn Wright, Building the Dream, 78-93; Clifford Clark, Jr.; and Adam Sweeting, Reading Houses and Building Books.

<sup>17</sup> Philippa's desire to restore ancestral property complicates the novel's incestuous overtones and its valorization of "transgressive desire" that critics like Radinovsky explore (203). When considering these issues, it may be useful to follow critics who have connected incest and ancestral property in Wuthering Heights, a novel that Stoddard greatly admired.

<sup>18</sup> Philippa is described as a Catholic from the South. As recent scholarship has suggested, Philippa may be of mixed race lineage from South America. See Jennifer Putzi, "The 'American Sphinx'"

<sup>19</sup> The persistent nineteenth-century connotations of these meanings are investigated at length in Amy Kaplan, "Manifest Domesticity."

<sup>20</sup> The Auster family servant, Elsa, is a notable exception in that she leaves their home space to inhabit a space of property that she owns.

<sup>21</sup> From his youth, Parke is treated differently from Philippa: allowed to stay at home and read while Philippa must go to church, made exempt from household duties, and encouraged to live leisurely. When comparing the costs of Philippa's inexpensive education and Parke's exorbitant one, Sarah defends her choices by claiming that "a man's bills are different," echoing the attitude in *The Morgesons* that "girls can go to the poorhouse" as long as the brother is kept wealthy (Two Men 49). Parke does not learn a trade and does not work, which Elsa reasons is the cause of his ruin: " 'It all comes from him having nothing to do. How could he help having riches left to him, though? How could he help taking after one or two of his relations?' " (Two Men 177).

<sup>22</sup> Charlotte's relationship with inheritance is also interesting. Although she has blue eyes and silky hair—no marks of blackness on her body—her blood remains tainted. As Parke himself claims, Charlotte is "ignorant, confiding, weak, poisoned with ancestral blood..." (Two Men 163). Charlotte's white body and black blood embody the injustice of racial inheritance—no matter how "white" she may seem, one drop of "black" blood condemns her. Rather than adding to or stabilizing family value, Charlotte would deplete and taint it. The inheritance of poisoned blood is worse than a mere lack of property.

<sup>23</sup> In Two Men, Stoddard focuses even more intently on the psychological damage caused by the relationship between women's duty and family property. The maternal figure in the novel, Sarah Auster, is obsessed with family property, and she enforces the notion of women's duty more cruelly and resentfully than Mary Morgeson. At the end of the novel, the daughter figure, Philippa, and her husband (and one-time father figure) seem even more inextricably bound to and contained within the family home than Cassandra and Desmond at the end of *The Morgesons*. Despite these similarities, Two Men contains other interesting—and problematic—plot dynamics, most notably issues of race and miscegenation, which cannot be adequately investigated in the confines of this article. Rather than a cursory treatment of this rich novel, I focus on Stoddard's first and final novels to demonstrate her shifting interests in property, duty, and self-possession over the course of her novel-writing career.

<sup>24</sup> For more on how the family served as a model for republican society, see Jay Fliegelman, Prodigals and Pilgrims and Elizabeth Barnes, States of Sympathy

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<sup>25</sup> Weinauer's essay interprets Temple House as an American gothic novel that uses the home space to engage in contemporary political issues to "express deep skepticism about the promises of industrial development in the postwar period." I agree that Stoddard's novels are more politically engaged than have hitherto been explored. Yet I believe it is important to highlight how the novel is consistent with Stoddard's attempts to grapple with the theoretical underpinnings of liberalism. I trace her anxiety to a cynicism about the roles built into contemporary constructions of marriage, rather than (or perhaps in addition to) a cynicism specific to the nation's project of Reconstruction.

<sup>26</sup> Temple House is also a space in which future generations are in peril. Tempe's son, George, dies from a mysterious illness. Even though he is technically a Drake, he is called Georgie Gates and is treated by many in the family as the heir of Temple House. His death reveals Temple House to be a dangerous environment for children, just as the Morgeson home is, when one considers that Cassandra apparently will not have children and Veronica's baby suffers from unspecified mental and physical difficulties. At the conclusion of all of her novels, Stoddard is wary about the presence of future generations and presents a world devoid of the fertility present in most domestic novels' finales.

<sup>27</sup> Stoddard openly admires male independence in much of her personal correspondence. One can also find such characters in Stoddard's short fiction as well as in the figures of Jason Auster and Osmond Luce in Two Men.

<sup>28</sup> It is worthwhile to note that Stoddard portrays Argus's transformation from individual to husband by depicting an intermediate relationship with Sebastian, a shipwrecked man of Spanish origin who eventually joins the community of Temple House and marries Tempe. There are quite evident elements of homosocial and even homoerotic desire in Sebastian and Argus's relationship, which cannot be explored at length in this essay. Stoddard makes clear that it is Argus's acceptance of Sebastian's friendship that enables his later union with Virginia.

<sup>29</sup> It is worth noting, however, the unusual relationship between the inhabitants of Temple House. Their rejection of kinship signifiers creates a domestic space in which desire seems to extend out in all directions. For example, Sebastian and Virginia, who have an intense romantic attraction to one another, will live in Temple House together while married to other people. In addition, Argus and Sebastian's friendship has a distinct homoerotic quality, which is never resolved. In many ways, Stoddard's novels with their unusual domestic arrangements would make for interesting comparisons with utopian, free-love communities of the nineteenth century.

<sup>30</sup> The case in question was Denison v. Denison (Md. 1872).

<sup>31</sup> Examples of such women's rights novels, which have often been critically ignored, include Mary Gove Nichols's Mary Lyndon; or, Revelations of a Life. An Autobiography and Caroline Chesebro's Isa, a Pilgrimage.

## EPILOGUE

### “THE QUESTION FOR DISCUSSION”: WAGE LABOR, SELF-POSSESSION, AND THE DECLINE OF THE DOMESTIC NOVEL

“Let the State be logical; if marriage is a civil contract, it should be subject to the laws of all other contracts....We need a national law or no law on this question.”

-Elizabeth Cady Stanton, “Marriage and Divorce,” The Revolution, October 29, 1868

Over the course of this project, I have tied the rise of the domestic novel to the status construction of marriage, which became idealized during the early decades of the nineteenth century as a way to provide stability amidst market fluctuation. Like the period’s legal discourse, the domestic novel associated women with the home and uncompensated labor in order to secure a portion of the economy from the commercial markets and speculation. As market speculation became a more integral part of the American economy and as women’s rights activists focused on changing the legal definition of marriage, the possibilities that the domestic novel envisioned were foreclosed. It is important to note that the culture continued to believe in natural gender differences and that the husband and wife could not negotiate the marriage contract on their own terms. However, it is undeniable that after the Civil War the definition of marriage expanded. This change occurred gradually from state to state, from region to region, but domestic law increasingly recognized married women’s right to contract their own labor and to retain their earnings. Once women had the ability to contract, it became less feasible to imagine them secure in a home that is safe from the market.

In this conclusion, I will trace the decline of the domestic novel by providing an overview of the legal changes of the postbellum period. I will then turn to Lillie Devereux Blake's Fettered for Life (1874), which provides a positive portrayal of women's interaction with the commercial economy, as well as champions a contractual model of marriage. Through its depiction of married women's rights and capabilities, it represents a significant departure from the domestic novels on which this project has focused.

In 1855, radical women's rights activist Francis Gage openly condemned the status construction of marriage because of its denial of women's self-possession: "We must own ourselves under the law first....Let us get out of our prison-house of law. Let us own ourselves, our earnings, our genius; let us have the power to control as well as to earn and to own" (qtd in Stanley 203). Despite Gage's powerful assertion that the right to contract would produce self-possession, many antebellum women rights activists disapproved of the push to restructure the marriage relationship.<sup>1</sup> In the early nineteenth century, to be married meant being involved in a status relationship; therefore, imagining an alternative to status meant imagining a relationship that could not be marriage. Many activists believed that the law should provide wives with better protection, but this did not entail equal civil rights, a concept which was often associated with an attempt to deny natural sexual differences. For many women's rights activists, discussing marriage as a contract threatened the sanctity of the family, particularly because such a discussion usually insinuated that divorce should be more broadly accessible. According to historian Elizabeth B. Clark, these activists often believed that the contract theory of marriage "neither worked realistically to redress inequality, nor acknowledged the durability and permanence of parental or marital ties" (41). Instead, the majority of antebellum women's rights activists "invoked duties rather than

rights” when discussing marriage. They were willing to acknowledge the violation of the status ideal when a man did not fulfill his obligations, but this was not the same as asserting women’s right to contract.<sup>2</sup> Frustrated at the response of the larger movement, Elizabeth Cady Stanton continued to believe that transforming marriage into a legal contract was essential to true reform. She wrote to Susan B. Anthony in 1853: “I do not know that the world is quite willing or ready to discuss the question of marriage....[But] the right idea of marriage is at the foundation of all reforms....I feel this whole question of woman’s rights turns on the point of the marriage relation, and sooner or later it will be the question for discussion” (qtd in Stanley 177).

As lawmakers began to consider expanding civil rights to freed black men, women’s rights activists, who had often been deeply involved in abolitionism, began to resent the hypocrisy evident in legislators’ willingness to grant contracting rights—and, thereby, self-possession—to one group of people while denying them to another. During the debates surrounding slave emancipation, the federal government effectively condemned one status relationship—slavery—while it upheld another—marriage. This contradiction became most evident when federal legislators decided to exclude gender from the Civil Rights Act of 1866. Senator Edgar Cowan opposed the initial draft of the bill because, as he informed his fellow legislators, it “confers upon married women, upon minors, upon idiots, upon lunatics...the right to make and enforce contracts” (qtd in Stanley 57). The possibility that married women would be granted contract rights was enough to threaten the bill, and Republican lawmakers decided to limit the scope of the legislation to address race only. This move ensured that marriage remained governed at the state level, all but guaranteeing that its legal definition would not change. As one lawmaker assured his fellow legislators: “Your

State may deprive women of the right to...contract....But if you do so...it must not be on account of race, color, or former condition of slavery” (qtd in Stanley 58). Throughout these legislative debates, lawmakers glorified contract rights as the key to male sovereignty, while simultaneously denying such abilities to married women.

The women’s rights movement began to shift toward Gage’s and Stanton’s more radical views after the Civil War when the connection between contracting ability and freedom became a central tenet of American political rhetoric. Following this trend, the women’s rights movement began to move away from its focus on duties and toward the new rhetoric of rights. As Amy Dru Stanley notes: “...feminists claimed that marriage belonged at the very center of public debate over the outcome of slave emancipation. To their way of thinking, this was the question of contract that logically followed abolition, for it distilled the inequality of the sexes and the continuing ownership of persons” (179-80). In particular, they pushed for a wife’s right to her earnings and for women’s suffrage—both of which required a recognition of women’s self-possession, even in marriage. These efforts, combined with changing economic conditions, helped usher in a second wave of married women’s reforms lasting from approximately 1860 through 1880.

By entitling a wife to her earnings, these laws altered the marriage relationship because they overturned the notion that a husband had exclusive rights to his wife’s labor. As legal historian Reva Siegel argues, “The second wave of reform thus exceeded the logic of family protection. In recognizing the wife as a legal and economic agent in her own right, the reform statutes implicated the structure of the marriage relation itself” (Siegel, “Modernization,” 2145). The earnings statutes endorsed women’s right to enter the marketplace, and they also recognized women’s labor as an important commodity. In other



words, the law no longer associated women with anti-market fears or the need for property stability. Thus, the new laws fundamentally changed a wife's position. As Amy Dru Stanley notes, "In principle, [the laws] placed her contract rights on a new foundation—on her title to her own labor, rather than to property owned separately from her husband" (199-200). The second wave of married women's property rights revised the marriage contract to give wives contractual rights and ownership over their own labor; a husband's legal identity was no longer believed to shelter his wife from market activity.

Lillie Devereux Blake's Fettered for Life: Lord and Master reflects the increasingly strident opposition to the status construction of marriage in the wake of slave emancipation, and therefore provides an interesting point of comparison with the domestic novels that this project examines. A prominent women's rights activist in her own right, as well as a frequent contributor to Anthony and Stanton's The Revolution, Blake noted the inherent contradictions in the contemporary political climate: although the right to contract was essential for men, it was dangerous for married women.<sup>3</sup> Because of the novel's thorough critique of women's legal disadvantages, David Reynolds claims that Fettered for Life is "the most comprehensive women's rights novel written in nineteenth-century America" (Reynolds 401). Indeed, Susan B. Anthony championed the novel; in her diary she noted that the novel would "stimulate every girl reader to have something beside marriage to depend on for support" (qtd in Farrell 131). Anthony correctly divined Blake's intention—to dispute the beliefs that women needed protection and that women found the greatest fulfillment in marriage and home life. As Blake's biographer, Grace Farrell, notes, even the novel's title foregrounds Blake's concern with the legal definition of marriage, particularly highlighting the persistence of status a decade after slavery had been abolished: "'Fettered' was a code

word for black slavery, a word that came to signify for antislavery feminists their own link with their sister slaves, and it also refers to marriage, with the novel's subtitle 'Lord and Master' doubling both meanings and the theme of female constriction and imprisonment underscoring them" (132). In her novel, Blake demonstrates the injustices of the current model of marriage, and she offers a new ideal of marriage as a union of two equal agents.

In many ways, Fettered for Life's plot resembles the trajectory of the domestic novel. It follows its central protagonist's maturation process from her initial separation with her family until her marriage. It also focuses on a community of women and frequently portrays the everyday life of the home. Its investigation of depraved urban life and its sensationalistic tendencies also recall George Lippard's The Quaker City (1845). Both novels expose the powerful men of the city as lurid, deceitful, and perverse, and they imagine the perils that single women face in city life. However, unlike urban sensational tales or domestic fiction, Blake's novel supports women's right to earn a living, and it asserts that their presence in the city and their participation in politics will bring much-needed change, particularly for the urban poor. In fact, the novel's complex and overlapping plot incorporates almost every major reform movement associated with women in the nineteenth century, advocating temperance, women's suffrage, and women's property reforms and decrying prostitution and domestic violence.

Throughout the novel, Blake decries the law because it permits and even propagates so many of the evils done to women. Through the characters' frequent discussions of women's political position, Blake presents every argument for legal reform. When the prominent doctor Mrs. D'Arcy presents the protagonist, Laura Stanley, with a series of newspaper articles about domestic violence, she emphasizes that the status construction of

marriage informs a culture indifferent to the continued abuse of women: “ ‘but it is no wonder that such atrocities are lightly punished, when we realize what is the general tone of our laws with regard to women....Indeed the whole dicta of the law indicate that the wife is considered as the property of the husband, subject to him, and ever amenable to his correction’ ” (Blake 141-42). Fettered for Life’s plot repeatedly identifies the legal definition of marriage as the central problem facing late nineteenth-century American women.

Rather than depicting the law as an additional protection for women, as women novelists of the 1850s did, Blake portrays legal practitioners as cunning predators who use their power to abuse women. When the novel opens, Laura Stanley is being held at a jailhouse against her will. A policeman had brought her there after he found her walking the streets of New York at night alone.<sup>4</sup> All of the policemen, as well as the judge who is assigned to her case, evidently suspect that Laura is a prostitute. During her examination, Judge Swinton asks Laura how she has been employed, and she claims that she has been doing general housework in the country. Openly doubtful of her story but clearly attracted to her beauty, the judge arranges for Laura to stay in the boarding house of one of his court assistants, Mr. Blodgett. Soon after arriving at Blodgett’s, however, she begins to suspect that the house is not an ordinary boarding house. As she tries to plan her escape, Frank Heywood, a court reporter who witnessed Laura’s rough treatment at the jailhouse examination, arrives to save her. He explains that Blodgett’s is essentially a brothel, which Judge Swinton fills with the vulnerable women he examines in court. In these short opening scenes, Blake establishes that the law is dominated by threatening and abusive men.

The danger posed by the legal practitioners at the beginning of the novel extends throughout the narrative, particularly in Blake’s unflinching depiction of domestic violence.

Rhoda, Biddy, and Mrs. Blodgett are all victims of male brutality, including rape and spousal abuse. Biddy almost dies as a result of her husband's cruel assaults, and Mr. Blodgett mercilessly kicks his wife to death toward the end of the novel. Blake makes it clear that these men are wicked, pitiless, and empowered by the legal system to unleash their aggression onto their wives. By including so many instances of male violence, Blake asserts that such acts of depravity are no mere isolated incidents, and she prevents her readers from simply dismissing a character's individual suffering. The characters who suffer from the threat of domestic violence are all working-class women, and through her portrayal of their trials, Blake fictionalizes a prominent argument of the women's rights movement: that even if upper-class husbands do not exploit their rights and strike their wives, the law does not adequately prohibit more brutish men from committing such assaults.

If Blake reinscribes the class biases of the postbellum women's rights movement, she also intimates that middle- and upper-class women who labor must brave charges of prostitution from unsympathetic men. Not only do the officers of the court suspect Laura Stanley of prostitution at the beginning of the novel, but the men in the city repeatedly conflate women selling labor with women selling themselves. As we have seen, male self-possession steeled the man's identity as he entered the wage market; he could always retain a core sense of self even as he sold his labor. Because Blake's male characters do not acknowledge women's self-possession, they necessarily believe that any woman who works for a wage is placing her entire self onto the market for sale. Laura encounters this view when she takes a job as a book agent in order to supplement her income. The position requires that she sell books door-to-door in offices filled with leering, unwelcoming men. On her sales trips, Laura must interact with sexually aggressive customers, who treat her

exclusively as a sexual commodity. One customer buys a book after leering at her inappropriately and then assures her that “ ‘...whenever you have books to sell, be sure and come here...I’d pay a dollar any day to look at such a pretty face!’ ” (Blake 178). His employees overhear the conversation and remark of Laura, upon her departure: “ ‘She’s one of ‘em!’ ” (Blake 179). These men see nothing wrong with selling their own labor to the employer, but they condemn Laura as a prostitute for her own attempts to make money by engaging the man in business. Blake continually emphasizes the hypocrisy of the theories supporting male self-possession and wage labor while denying the same rights to women; men believe that they alone can perform wage labor without selling themselves.

Laura’s male customers also demonstrate the pervasiveness of belief in female dependency inherent to the status construction of marriage. One of her first customers openly ridicules Laura’s decision to take a job: “ ‘it’s all nonsense for women to try to support themselves; even those who pretend to are all helped by some man; all of them...[A]nd you ought be getting married. If you had a good husband to take care of you, you wouldn’t be doing this sort of thing’ ” (Blake 176). Another customer, moved by Laura’s plight, reacts with what he intends to be sympathetic advice, but still dismisses Laura’s ambitions and ignores her grievances: “ ‘...I see that you are honestly trying to support yourself; but take an old man’s advice: go home, have a little patience, and by and bye, you will get a good husband to take care of you!’ ” (Blake 181). By portraying the customers’ ignorance of Laura’s considerable intelligence and self-determination, Blake makes men who oppose women’s careers appear impractical, unfeeling, and reactionary.

If Laura’s book agent job is degrading, Blake is quick to point out that it is not because traveling door-to-door is demeaning for a woman; rather, the position is degrading

because of the inappropriate way that men treat Laura. When a customer suggests that Laura should find a more respectable way to earn a living, Laura powerfully describes the injustices facing women in every workplace:

I am teaching drawing at half the salary paid to my predecessor, because I am a woman; and now you tell me I ought not to earn money in this way, because I am a woman! What am I to do? Even if I am a woman, I am hungry and thirsty, and cold, like a man; I have to pay the same board as a man; I must wear warm clothes as well as a man; in short, I need money to spend as much as if I were a man; and yet, because I am a woman, I am not allowed to earn it!" (Blake 181)

Laura may not care for her book-selling job, but she is driven to that view only because she must endure either lewd behavior or unrealistic criticism from her male customers. Even as Laura despises the treatment she receives as a book agent, she continues to demand her right to work such a job; therefore, her rhetoric in these scenes directly draws from the new emphasis on equal civil rights within the women's movement that emerges during the post-war period. In this way, Blake portrays women's rights advocates as sensible and ladylike women, like Laura, rather than the shrieking radicals who were often depicted in contemporary newspapers and magazines.

While Laura Stanley represents a woman determined to earn a living for herself, her friend Flora Livingstone embodies the privileged woman who is destroyed by a status-based marriage that robs her of self-possession. Young and beautiful, Flora attracts the attention of the wealthy Mr. Le Roy. From his entrance into the novel, Blake uses the language of subjugation and slavery, rather than courtship and companionate marriage, to describe his pursuit of Flora. With Le Roy, Blake indicates, Flora "was no longer free, no longer belonged to herself, she had received a master, and been compelled to submit to the symbol of his power" (Blake 129). Flora's parents endorse the match, however, focusing only on Le Roy's wealth, and Flora feels powerless to defy them. After their marriage, Le Roy closely

monitors Flora's spending, and when she objects to his control, he insists on his legal right as a husband to do so.

Through Flora's relationship with Le Roy, Blake emphasizes the emotional cruelty that husbands can inflict upon their wives, and she asserts the need for women's self-determination within marriage. Unable to obtain money of her own, Flora secretly submits a poem to a popular magazine in order to earn a small cash prize. When the poem is published, Le Roy is mortified and forbids her from writing again. Flora becomes despondent; to take away her writing is to take away "all of her hope" (302). To mollify her, he claims that he does not oppose her writing; he merely opposes her publishing her writing and earning wages from those publications. This supposed compromise does not please Flora, though. As she protests, " 'But it does not satisfy me to write them for my own eyes alone...I long to have others read my thoughts. I was so happy the other day when my piece came out' " (Blake 345). Flora's attitude is markedly different from the women writers who appear in Ann Stephens's The Heiress of Greenhurst and Caroline Lee Hentz's Ernest Linwood. Flora does not claim that she is writing "only a record of my heart's life" nor does she threaten to burn her pages, indifferent to whether anyone reads them. Regardless of whether or not we can take comments from these earlier writers at face value, it is notable that Blake depicts a wealthy, privileged woman who wants her ideas to circulate publicly and be remunerated for them. When Le Roy refuses to relinquish control over Flora, she becomes mysteriously ill and soon dies. Depriving Flora of her writing opportunities literally robs Flora of herself.

The prominence of women's artistic pursuits in Fettered for Life may appear as if Blake, like the domestic novelists before her, privileges the same limited range of career opportunities for women. Yet in Fettered for Life, Blake does provide a portrait of a happy

professional, Mrs. D'Arcy, who is a successful doctor and "the model for what any woman might be" (Blake 384). Mrs. D'Arcy is one of the most capable doctors in the city. In fact, Blake even insinuates that Flora dies because Le Roy would not call on Mrs. D'Arcy to treat Flora.

Blake's most notable depiction of women's possible professions emerges in her portrait of Frank Heywood, an activist city beat reporter, who also subverts nineteenth-century notions of male protection. Throughout the novel, Heywood appears at key moments, often when Laura is threatened by Judge Swinton and his henchmen. Heywood's character seems to provide the male protection that is so lacking in nineteenth-century urban life. Yet Heywood never capitulates to the dominant cultural beliefs about women's weakness and male protection because, as the reader finally learns, Heywood is actually a woman. In Blake's fictional landscape, therefore, men remain almost exclusively predators; it is women who can and must protect one another.

Blake provides Frank Heywood's story in a form of his/her long confession to Laura, and it contains echoes of the typical domestic novel plot. Orphaned by the Civil War, Frank is left friendless on his/her family's now worthless plantation. As s/he tells Laura in language that could be taken directly from a domestic novel: "I found myself at twenty, alone in the world, with no protector and no home!" (Blake 365). Frank, however, decides that s/he will not rely on any man for support. " 'Full of a romantic belief in [the] possibilities of work,' " Frank explains to Laura, s/he sells all of the family's remaining possessions and moves to New York City. Frank faces the insulting and abusive treatment from the city's men, including Judge Swinton, who attempts to sexually victimize Frank as he later will Laura. At this point, Frank makes the decision to dress as a man in order to find his next job.



After pawning his/her father's watch, Frank buys a suit of men's clothes and is transformed. Frank assures Laura: " 'The change was delightful! You can never imagine what it was! My limbs were free; I could move untrammelled, and my actions were free; I could go about unquestioned. No man insulted me, and when I asked for work, I was not offered outrage' " (Blake 366). Through Frank, Blake presents women's involvement in the cash and credit economy as thoroughly innocuous. Rather than worrying about losing his/herself, as Melville's Pierre does, Frank feels secure in working for wages. Even though s/he must hide his/her gender, Frank's freedom makes him/her the most self-realized character in the novel. Furthermore, after earning a fair wage for his/her work as a reporter, Frank is able to buy back his/her father's pawned watch. Unlike Pierre, who is tortured by liquidating family assets for cash, Frank's involvement in credit is not only harmless, it is edifying.

Frank's fantastical story highlights Blake's belief in the performative aspects of gender. While cross-dressing certainly occurred in earlier texts, Frank's decision is notable because s/he commits to cross-dressing until his death in order "to prove what a woman can do" (Blake 367). In proving what a woman can do for the span of his/her life, though, Frank will actually prove what a woman can become—as fully capable and self-possessed as any man. Frank's narrative resembles a domestic novel's plot only to disrupt the reader's expectations of the genre. Instead of learning from traumatic urban experiences that s/he needs the protection of friends and family, Frank rejects gender expectations and demands self-possession through wage labor.

Despite Blake's repeated depictions of the harrowing threats that women face in the city, Blake resists the temptation to turn away from the urban landscape and toward a nostalgic representation of lost rural life in the U.S. Critics have too quickly categorized

Fettered for Life as an early urban reform novel, but it is instead a more thorough indictment of women's legal position throughout the U.S. Blake devotes several chapters in the middle of the novel to Laura's return to her family's farm, and in these scenes Blake reveals that women's experience in rural life can be as unfulfilling and oppressive—albeit not as dangerous—as it is in the city. When she arrives at the farm, her joy at seeing her sisters is quickly replaced by her remembrance of the difficulty of rural labor: “The old home life seemed to come back to her with all its drudgery, oppressing her, and wearying her. No rest, no time for thought here; a daily struggle with endless work, a breathless race from morning till night; this was the lot to which those whom she so dearly loved were condemned!” (Blake 314). Blake's inclusion of Laura's return home in Fettered for Life prevents her readers from inaccurate comparisons between dehumanizing wage labor and the supposedly gratifying work of the productive homespace. In Blake's narrative, there is no nostalgic turn toward a more peaceful and stable economy situated in the home and removed from the pressures of the marketplace.

In her descriptions of rural family life, Blake is careful to point out that husbands in the country also use their legal standing to abuse their wives. Laura's father is a domestic tyrant, unmercifully commanding a house filled with women. Throughout Laura's visit, Blake repeatedly mentions the laziness of the country men who congregate at the general store in town. As one of Laura's relatives claims, “ ‘Drive any evening through any of these villages hereabout, and you will find just such a lot of men lounging at the store; big hulking fellows who ought to be helping their tired wives at home’ ” (Blake 320). If rural life is a paradise, Blake implies, it is because women must unceasingly labor to make it so. Rural husbands, like their urban counterparts, subjugate their wives by ruthlessly controlling the

family's money. Laura's cousin tells her a story of a woman who once entered the store with her young daughter and asked her husband for money to buy fabric for an apron that their daughter needed to work around the farm. The man denies his wife's request, and after she leaves, he buys all of the men in the store cigars. Such a scene could easily be included in earlier domestic novels, but Blake follows the story with Laura's cousin's pledge that once she receives the right to vote, she will legally bar such cruelty on the part of husbands. The possibility of translating critique into political action—and in particular the continual return to the rhetoric of rights—marks a shift from the hesitant probing of the possibilities afforded by status of earlier women novelists to Blake's more confrontational womanist perspective.

Despite Blake's repeated portrayal of husbands' abuses and despite Frank's story of a fulfilling life without the possibility of marriage, Fettered for Life is not an anti-marriage novel. For example, when introducing of Mrs. D'Arcy, Blake almost immediately informs the reader that the widowed doctor's marriage "had been a profoundly happy one" (Blake 29). Like many women's rights activists in postbellum America, Blake believed that marriage could be a beneficial relationship for men and women, provided it was an equal relationship.<sup>5</sup> So, at the end of Fettered for Life, Blake offers her revised conception of the marriage contract. When Guy Bradford asks Laura Stanley to marry him, Laura agrees but then justifies her decision in rather unsentimental terms: " 'For I believe that you will not ask me to surrender my liberty entirely, and will permit me to follow out my own career in life' " (Blake 379). In agreeing to marry Guy, Laura makes clear that her career is essential to her selfhood and that she will not relinquish her self-possession to him. Guy responds how a truly loving man should: " '...your obligations to me shall be no greater than mine to you. We will make life's journey hand in hand, equals in all things....' " (Blake 379). This vision

of the ideal marriage differs significantly from the domestic novels on which this project has focused. Certainly it rejects the conservative view of marriage as a status relationship, as well as the nostalgic reverie, in The Pioneers and The House of the Seven Gables, in which women provide stability and resolution amidst the tensions of the market. Furthermore, it supersedes even the most progressive views of marriage in antebellum domestic novels. For example, in Southworth's The Lost Heiress, Falconer and Maude's marriage is endorsed because Falconer refuses to accept control over Maude's inherited property, yet he never suggests that the two will be equal "in all things." Although he repudiates his claim to her property, he does not dispute her emotional claim that a woman "does so delight to depend upon her husband."

Fettered for Life is a novel deeply committed to married women's civil rights, and as such, it may not be representative of postbellum fiction. However, it does provide an example of the new kind of legal fiction emerging during this time. Fettered for Life is, after all, a fiction about the possibilities and consequences of contract. Thus, it highlights the declining imaginative possibilities for status in the postbellum period. Whereas antebellum literary fictions explored women's possibilities within an idealized conception of marriage, the postbellum period—which was marked by civil rights debates during which status was expelled from the legal realm—explored women's possibilities within the new paradigm of contract and rights. As wives earned the right to market their own labor and retain their own earnings, Henry Ward Beecher's ideal of "a family that is not marketable" slowly became impossible. A new kind of family must emerge to replace the status-based one, and as I demonstrate, Elizabeth Stoddard's fiction centrally takes up this problem, a problem that will continue to engage writers of the late nineteenth century from Charlotte Perkins Gilman to

Henry James to Pauline Hopkins. But the fantasy of the domestic novel—that the wife’s inferior legal status was a symbol and site of stability—was no longer a viable legal fiction, but simply nostalgia.

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<sup>1</sup> Amy Dru Stanley dates the connection between the revision of the marriage contract and women's emancipation to a private letter Elizabeth Cady Stanton wrote in 1851. See Stanley 177. Elizabeth B. Clark claims that its origins lay in the communitarian visions of Robert Owen and Francis Wright. See Clark 28.

<sup>2</sup> Antoinette Brown Blackwell is probably the most widely known representative of the covenantal view of marriage. She and Stanton debated the issue of contract and divorce at the 1860 national women's rights meeting. For more, see Stanton, Anthony, and Gage, The History of Woman's Suffrage, I:716-735.

<sup>3</sup> Blake began writing in 1857 shortly after her first husband's death, and she became active in the women's rights movement during the Civil War. Resisting her family's advice that she remarry, Blake began to write in order to support herself. She wrote short stories, columns, and novels, and she also served as a Washington correspondent for the New York Evening Post and The World. For more on Blake's biography, see Farrell.

<sup>4</sup> Blake's biographer, Grace Farrell, attributes this portrayal of the dangers of the jailhouse to Blake's work in the early 1870s with a committee that examined women's treatment while in police custody. For more, see Farrell 132-133.

<sup>5</sup> Farrell attributes the novel's support of marriage to Blake's considerable antipathy toward Victoria Woodhull, who ardently supported free love. Farrell implies that Blake wanted to demonstrate to the women's rights movement that women could be self-possessed within marriage. See Farrell 125-131.

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